

BALURAM

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v.

P. CHELLATHANGAM & ORS.

(Civil Appeal Nos. 10940 -10941 of 2014)

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DECEMBER 10, 2014

[T. S. THAKUR AND ADARSH KUMAR GOEL, JJ.]

Code of Civil Procedure. 1908 – Or. 1, r. 10 – Impleadment as a party in a suit for specific performance – Agreement to sell trust property by trustees in favour of plaintiff – Application for impleadment by appellant as defendant on the ground that he would suffer prejudice being beneficiary of the Trust if the sale is effected at the price agreed – Trial court allowed the application holding that the appellant was not a stranger to the subject matter of the dispute and was entitled to be impleaded as a party – High Court set aside the order of trial court on the ground that the appellant was not a necessary/proper party – Held: Appellant being beneficiary of the trust property cannot be held to be stranger – Trial court was justified in impeading him as a party – Trusts Act, 1882.

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Allowing the appeal, the Court

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HELD: 1. Admittedly, the appellant is a beneficiary of the Trust and under the provisions of the Trusts Act, the Trustee has to act reasonably in exercise of his right of alienation under the terms of the trust deed. No doubt, it may be permissible for the appellant to file a separate suit, as suggested by Respondent No.1, but the beneficiary could certainly be held to be a proper party. There is no valid reason to decline his prayer to be

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A **impleaded as a party to avoid multiplicity of proceedings. Order I Rule 10(2), CPC enables, the Court to add a necessary or proper party so as to “effectually and completely adjudicate upon and settle all the questions involved in the suit”. In the present case, the appellant**
 B **could not be held to be a stranger being beneficiary of the Trust property. The trial Court was justified in impleading him as a party. The High Court erred in interfering with the order of the trial Court. [Paras 13 and 15][296-A-C; 299-C]**

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Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd. **2010 (7) SCC 417 : 2010 (7) SCR 790 – relied on.**

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S. D. Joseph and Ors. v. E. Ebinesan and Ors. **2009 (5) CTC 193; Bharat Karasondas Thakur vs. Kiran Cosntruction Co. & Ors.** **2008 (13) SCC 658 : 2008 (6) SCR 59 – referred to.**

Case Law Reference:

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2009 (5) CTC p. 193 referred to **Para 7**

2008 (6) SCR 59 referred to **Para 8**

2010 (7) SCR 790 relied on **Para 11**

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CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 10940-10941 of 2014.

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From the Judgment and Order dated 24.11.2011 and 18-09-2012 of the High Court of Madras at Madurai Bench in C.R.P. No. 2610 of 2010 and Review Application (MD) No. 1 of 2012 in C.R.P. No. 2610 of 2010 respectively.

G. S. Mani, R. Sathish for the Appellant.

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Ms. Madhurima Mridual, Manoj V. George, Ms. Shilpa M. George, Aakash Kamra, Siju Thomas, Alex Joseph for the Respondents. A

The Judgment of the Court was delivered by

ADARSH KUMAR GOEL, J. 1. Leave granted. B

2. These appeals have been preferred against Orders dated 24th November, 2011 and 18th September, 2012 passed by the High Court of Madras, Bench at Madurai in C.R.P. No.2610 of 2010 and in Review Application No.1 of 2012 in C.R.P. No.2610 of 2010 respectively. C

3. The question raised for our consideration is whether the High Court was justified in reversing the Order of the trial Court allowing the prayer of the appellant to be added as a party in a suit for specific performance filed by Respondent No.1-plaintiff. D

4. Case of the plaintiff in O.S. No.3 of 2007 filed in the Court of District Judge, Kanyakumari, is that K. Jagathees and R. Subbaram Babu @ Subbaram, Respondent Nos.2 and 3 respectively (original defendants in the suit) acting as trustees of "Subbaiah Paniker Family Welfare Trust" (for short "the Trust") entered into the agreement dated 9th December, 2003 to sell the suit property in favour of the plaintiff. The price of the property was settled at Rs.22,000/- per cent. A sum of Rs.1 lakh was received as advance. The plaintiff was ready and willing to perform his part of the contract but the defendants failed to execute the sale deed even in extended time. When called upon to do so, they took the stand that the sale deed could be executed only if the beneficiaries of the Trust agreed to the sale which was not a valid ground. E F G

5. During pendency of the suit, the appellant filed I.A. No.584 of 2008 in O.S. No.3 of 2007 in the Court of District Judge, Kanyakumari at Nagercoil, for being impleaded as H

A defendant, pleading that he will suffer prejudice being beneficiary of the Trust if the sale is effected at a throw away price. According to him, the value of the property was more than Rs.50,000/- per cent while the proposed sale was for Rs.22,000/- per cent.

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6. The application was opposed by the plaintiff submitting that the beneficiary was a stranger to the agreement and was not a necessary or proper party.

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7. The trial Court accepted the application. It held that the plaintiff was not a stranger to the subject matter of dispute and was entitled to be impleaded as a party. Reliance was placed on the Judgment of the Madras High Court in **S.D. Joseph and Other vs. E. Ebinesan and others**¹ holding as follows :

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“Every member who is having interest and right should be given an opportunity of being heard and the court must see whether subject matter could be factually adjudicated upon in the absence of proposed parties in a case where the property belonged to YMCA, a public Trust.”

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8. Aggrieved by the Order of the trial Court, the respondent-plaintiff preferred a revision petition under Article F 227 of the Constitution before the High Court with the plea that the appellant was not a necessary or proper party and thus the order of the trial Court impleading him as a party defendant was erroneous. Reliance was placed on the Judgment of this Court in **Bharat Karasondas Thakkar vs. Kiran Construction Co. and others**². The High Court upheld the plea of the plaintiff and dismissed the I.A. No.584 of 2008 filed by the appellant in the suit filed by the respondent-plaintiff. It

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¹ 2009(5) CTC p.193

² (2008) 13 SCC 658

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was further observed that since suit property is a Trust property, the trial Court can look into the relevant provisions of law and examine whether permission of the Court was required before entering into the sale agreement. A

9. Aggrieved by the Order of the High Court, the appellant has approached this Court. B

10. We have heard learned counsel for the parties.

11. Learned counsel for the appellant vehemently submitted that the view taken by the High Court is patently erroneous. The appellant was certainly a proper party and the trial Court was justified in exercising its jurisdiction under Order I Rule 10(2) of the Code of Civil Procedure, 1908 in impleading the appellant as a party. Even if the Trustee had the right of alienation, the Court was entitled to control the exercise of power of a Trustee under Section 49 of the Indian Trusts Act, 1881 (for short "the Trusts Act"). The appellant was entitled to be impleaded as a party to safeguard his right as beneficiary of the Trust so that the Trustees did not exercise their power of alienation unreasonably. Reliance has been placed on Judgment of this court in Mumbai International Airport (P) Ltd. vs. Regency Convention Centre & Hotels (P) Ltd.³. C
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12. Learned counsel for Respondent No.1 however, opposed the above submission and supported the impugned order passed by the High Court. It was submitted that since the appellant was neither necessary nor proper party, application for impleading the appellant as a party could not be entertained. The appellant was stranger to the transaction and could not object to the sale in question. F
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13. After due consideration of the rival submissions, we are of the view that the High Court erred in interfering with the order of the trial Court impleading the appellant as a party

³2010(7) SCC 417

A defendant. Admittedly, the appellant is a beneficiary of the Trust and under the provisions of the Trusts Act, the Trustee has to act reasonably in exercise of his right of alienation under the terms of the trust deed. Appellant cannot thus be treated as a stranger. No doubt, it may be permissible for the appellant
B to file a separate suit, as suggested by Respondent No.1, but the beneficiary could certainly be held to be a proper party. There is no valid reason to decline his prayer to be impleaded as a party to avoid multiplicity of proceedings. Order I Rule
C 10(2), CPC enables, the Court to add a necessary or proper party so as to “effectually and completely adjudicate upon and settle all the questions involved in the suit”.

14. In *Mumbai International Airport (supra)* this Court observed :

D *13. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure (“the Code”, for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:*

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G *“10. (2) Court may strike out or add parties.—The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been*

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joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

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14. *The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.*

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15. *A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make*

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A *such person a necessary party or a proper party to the suit for specific performance.*

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B *19. Referring to suits for specific performance, this Court in Kasturi [(2005) 6 SCC 733], held that the following persons are to be considered as necessary parties: (i) the parties to the contract which is sought to be enforced or their legal representatives; (ii) a transferee of the property which is the subject-matter of the contract. This*
C *Court also explained that a person who has a direct interest in the subject-matter of the suit for specific performance of an agreement of sale may be impleaded as a proper party on his application under*
D *Order 1 Rule 10 CPC. This Court concluded that a purchaser of the suit property subsequent to the suit agreement would be a necessary party as he would be affected if he had purchased it with or without notice of*
E *the contract, but a person who claims a title adverse to that of the defendant vendor will not be a necessary party.*

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F *22. Let us consider the scope and ambit of Order 1 Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be*
G *exercised either suo motu or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds*

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that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice."

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15. In the present case, the appellant could not be held to be a stranger being beneficiary of the Trust property. The trial Court was justified in impleading him as a party. The High Court erred in interfering with the order of the trial Court.

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16. Accordingly, we allow this appeal, set aside the impugned order of the High Court and restore that of the trial Court dated 10th August, 2010, impleading the appellant as a party defendant in the suit. There will be no order as to costs.

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