Madras High Court
Doraikannu Asari vs Nataraja Chetty And Ors. on 1 December, 1950
Equivalent citations: (1951) 2 MLJ 26
Author: C Reddi
JUDGMENT Chandra Reddi, J.

1. This appeal challenges the validity of the order of the District Judge permitting the first respondent to come on record as a party to the appeal pending before him in A.S. No. 324 of 1949. The first respondent purchased the property in dispute which is a house situated in Chingleput town from one of the parties to the suit on 12th October, 1949, between the date of the decree in favour of the third respondent and the filing of the appeal to the District Judge by the aggrieved party. While the appeal was pending in the District Court, the parties entered into a compromise and in consequence thereof, a compromise memo was filed on 4th January, 1950, which was recorded on the same day. But a decree in terms thereof was not passed immediately for some reason which is not necessary to mention here.

2. The next day, the first respondent coming to know of this, filed a petition under Order 22, Rule 10, for being impleaded as a party to that appeal so that he could attack the genuineness of the compromise. This was opposed by the appellant and the other respondents in the Court below on the ground that he was not entitled to come on record as a party to the appeal and his remedy if any was by way of a suit to set aside the decree on grounds of fraud and collusion. The assignor even disputed the genuineness of the assignment. But I am not now concerned with that matter at this stage. The trial Court overruling the objection raised both by the appellant and the third respondent, directed the alienee, the first respondent to be impleaded as a party to that appeal.

3. In this appeal against that order it is maintained by Mr. Krishnamurthy on behalf of the appellant, that the view taken by the Court below that the purchaser pendente lite could be brought on record as a party respondent and that the Court could enquire into the genuineness and the validity of the assignment is erroneous. The same objections which were raised by him in the Court below are repeated here. In support of this appeal he has cited to me certain decisions which I will refer to immediately.

4. In Laraiti v. Shamsunderlal A.I.R. 1932 All. 478, it was laid down that an application under Order 22, Rule 10 by a person who has purchased the suit property from one of the parties pendente lite to come on record on the ground that a compromise that was entered into between the parties on record would affect his interests should be rejected. The petition under Order 22, Rule 10 was filed after the compromise was recorded but before a decree was passed on the basis of the compromise. It was observed by the learned Judges that so long as the matter adjusted between the parties was by a lawful compromise a decree had to be passed in accordance with that compromise.

5. In Setupathi v. Secretary of State (1925) 50 M.L.J. 59 : A.I.R. 1926 Mad., a suit was filed by the Rajah of Ramnad against the Union Board for a declaration that certain streets round his palace belonged to him and did not vest in the Union Board. The suit was being contested by the Union Board and eventually the parties entered into a compromise whereby the right of the Rajah to suit

property was recognised subject to certain conditions and a memo of compromise was filed in pursuance thereof and recorded. But before a decree was given in terms of the compromise, the Secretary of State made an application to be impleaded as a party to the suit and this application was allowed by the District Munsiff. In revision, against that order, the order of the District Munsiff was set aside by this Court on the ground that the Court was bound under Order 23, Rule 3 to give a decree in terms of the compromise if it was a lawful one and the Court could not direct a party to be added if the original parties by the compromise had terminated the proceedings in that suit. At page 342 of the report Kumaraswami Sastri, J., who disposed of the petition, observed that the fact that the petitioner who claims a right or interest in the matter cannot, if the suit was terminated lawfully by the original parties thereto, allow third parties to agitate their rights in the suit. If third persons have any interest in the matter their remedy lay in filing a separate suit. If I may say so with respect, I entirely agree with the reasoning of the learned Judge.

6. In Vithilinga v. Sadasivayya A.I.R. 1926 Mad. 836 : 51 M.L.J. 148 : I.L.R. 50 Mad. 34, it was held, under Order 1, Rule 10, Clause (2) of the Civil Procedure Code, every person having or claiming to have any sort of title or interest in respect of any portion of the subject-matter of a suit cannot be made parties. Though in that case the question did not arise under Order 22, Rule 10 and also the learned Judge had not to consider the effect of a compromise under Order 23, Rule 3 still the principle underlying that decision is applicable to this case. To the same effect is the decision of Pakenham Walsh, J., in Narayanaswami Naidu v. Subbaramulu Naidu (1934) 68 M.L.J. 236, where it was laid down that a person who claims a derivative title in the suit properties cannot seek to be impleaded as a party to the suit.

7. In reply to Mr. Krishnamurthi's contention, Mr. P.S. Raman, counsel for the respondent, contends that it is absolutely necessary to permit a purchaser from one of the parties to come on record before a decree was actually passed in terms of the compromise to avoid multiplicity of proceedings. He relies on Lakshman Chandar Dey v. Nikunjamoni Dassi A.I.R. 1924 Cal. 188, to support his proposition.

8. In that case a person who purchased the property, pendente lite made an application under Order 22, Rule 10, after a suit was compromised between the parties and decree in terms thereof passed but before the decree was actually drafted. The application was rejected by the Judge who heard the suit on the ground that at the time when that application was made there was no suit pending and secondly there was long delay on the part of the petitioner in filing that application. This order was set aside in appeal by a Bench of that Court on the ground that the view of the trial Judge that the suit was not pending was not correct, and that mere delay was not a sufficient ground for dismissing the application. According to the learned Judges, so long as the decree was not actually drafted it could not be said that there was no suit pending. No doubt there is an observation in that case to the effect that though an applicant invoking Order 22, Rule 10, is not entitled as a matter of right to an order in his favour the Court undoubtedly had the discretion in the matter of granting an application under Order 22, Rule 10, to a person who purchased the property pendente lite which should be judicially exercised. There the learned Judges were not considering whether a person who has purchased the property pendente lite from a party to the suit or appeal could come on record after a compromise was recorded between the original parties to the proceedings. I do not, therefore, think,

that this ruling is an authority for the contention raised by Mr. Raman. Mr. Raman has not been able to place before me any decision in support of his arguments.

9. In the light of the rulings cited above, the only conclusion I can come to is that the first respondent could not be impleaded as a party to the appeal though his interests might be prejudiced by the compromise reached between the parties. It must be borne in mind that the first respondent is disputing even the genuineness and validity of the assignments and it is certainly foreign to the scope of this appeal to enquire into those questions. I must therefore hold that the order of the learned District Judge cannot be sustained and should be set aside.

10. In the result, the appeal is allowed with costs of the appellant (to be paid by the first respondent). The order of the Court below as regards costs will stand.