

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2015

CORAM:

THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

CRP (PD) No.904 of 2015

and

M.P.No.1 of 2015

P.Moorthy

... Petitioner

Vs.

1. K.Alamelu

2. Minor Gokul

3. Minor Rahul

R2 and R3 are represented
by their Mother and next friend,
namely, first respondent K.Alamelu

4. Kalaivani

5. Leela @ Leelavathi

6. Hariharan

7. Sivakami

8. Rajalakshmi

9. K.Jayalakshmi

... Respondents

PRAYER: Revision Petition filed under Article 227 of Constitution of India against the fair and final order dated 05.11.2014 passed in I.A.No.130 of 2014 in O.S.No.42 of 2010 on the file of the Additional Sub Court, Mayiladuthurai.

For Petitioner : Mr.S.Sounthar

For Respondents : Mr.P.Gopalan

ORDER

This Civil Revision Petition is directed against the order passed in I.A.No.130 of 2014 in O.S.No.42 of 2010 on the file of the Additional Sub Court, Mayiladuthurai.

2. The revision petitioner is the first defendant in O.S.No.42 of 2010. Respondents 1 to 3 herein have instituted the suit against the revision petitioner and others for direction, directing the defendants 1 and 2 to deliver the possession of the plaint 'C' and 'D' schedule property and also for direction to conduct an enquiry under Order XX Rule 12 of C.P.C.

3. The case of the first plaintiff is that one Rajagopal Iyer was the owner of the suit property and he has bequeathed the property in favour of his wife Valambal and they had a son by name Kannan. Kannan was married to Vembu @ Jayalakshmi according to Hindu Sastraic rites on 18.02.1972 and the first plaintiff was born to Kannan and Jayalakshmi. Further case of the first plaintiff is that Valambal executed a registered Will on 03.10.1983, giving life estate to the first plaintiff and vested remainder to the first plaintiff's santhathis. After the death of Valambal on 20.11.1993, the plaintiffs are entitled for possession of the property. The defendants filed their written statement disputing the

genuineness of the Wills executed by Rajagopal Iyer and Valambal and also denied that the first plaintiff is the daughter of Kannan born through Vembu @ Jayalakshmi.

4. After the evidence of plaintiffs and defendants was over, the plaintiffs filed an application in I.A.No.130 of 2014 in O.S.No.42 of 2010 under Order I Rule 10(2) C.P.C. to implead Mrs.Jayalakshmi as 4th plaintiff in the suit. In the affidavit filed in support of the application, the first plaintiff have stated that even though there is no specific plea in the written statement filed by the first defendant and also there is no issue regarding non-joinder of the necessary parties, the defendants argued the plea of non-joinder of Mrs.Jayalakshmi.

5. The application was resisted by the defendants stating that the plaintiffs are claiming title on the basis of the Will executed by Valambal and the proposed party is not a necessary party in the suit. Despite objection by the defendants, the trial Court allowed the application. Aggrieved by the said order, the present Civil Revision Petition has been filed.

6. Mr.S.Sounthar, learned counsel for the revision petitioner submitted that the proposed party is not a proper and necessary party in this proceedings and the application was filed when the suit stands posted for arguments. The

learned counsel further submitted that the proposed party was already examined as witness in the suit and the defendants have never stated that the suit is bad for non-joinder of the proposed party.

7. Per contra, Mr.P.Gopalan, learned counsel for the respondents submitted that under Order I Rule 10(2) C.P.C., at any stage of the proceedings, a party can be impleaded. It is further contended that the defendants are disputing the status of Jayalakshmi and therefore, she should be added as party to the suit.

8. I am not able to agree with the contentions of the learned counsel appearing for the respondents. Admittedly, there is no specific plea about the non-joinder of the necessary party in the written statement and there is no specific issue in this regard. Further, there is no cause of action against the proposed party. Undisputedly, the plaintiffs claims right over the suit property on the basis of the Will executed by Rajagopal Iyer and Valambal. In my considered opinion, the proposed party is not a necessary and proper party in this suit.

9. In view of the above, the impugned order dated 05.11.2014 passed in I.A.No.130 of 2014 in O.S.No.42 of 2010 on the file of the Additional Sub Court,

Mayiladuthurai, is set aside.

10. In the result, this Civil Revision Petition is allowed. No costs.
Consequently, the connected miscellaneous petition is closed.

02.03.2015

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Index : Yes / No.

Internet : Yes / No.

To

The Additional Sub Court,
Mayiladuthurai.

K.KALYANASUNDARAM, J.

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