



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P.PD(MD)No.1726 of 2011

and

M.P. (MD)No.1 of 2011

1.Nagarajan

2.Amuthavalli

3.Jayalakshmi

4.Nagalakshmi

5.S.Indirani

(5th petitioner is the LR of the 1st respondent vide order dated 28.10.2015 in M.P. (MD)No.1 of 2015)

... Petitioners

Vs.

1.Nagaraj (died)

2.Kanagaraj

3.Rengaraj

4.Nagammal

5.Sendurammal

6.Mayakannan

7.Ramakrishnan

8.Rengammal

... Respondents

Prayer: Civil Revision Petition is filed under Article 226 of the Constitution of India, against the fair and decretal order passed in I.A.No.364 of 2010 in O.S.No.25 of 2009 on the file of the Principal District Judge, Virudhunagar at Srivilliputhur, dated 06.04.2011.

For Petitioners : Mr.G.Venugopal

For Respondents : Mr.K.Hemakarthikeyan for R1 to 6

Mr.K.Vijayanand for R8

No appearance for R7

ORDER

This Civil Revision petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 06.04.2011 and made in I.A.No.364 of 2010 in O.S.No.25 of 2009 on the file of the learned Principal District Judge, Virudhunagar.

2.The revision petitioners herein are the plaintiffs 1 to 4 in the suit. It is manifest from the records that the revision petitioners have filed the above suit as against the respondents for partition. In the said suit, the defendants 2 to 6 have filed their written statement. In their written statement, they have taken a specific stand saying that their mother one Rengammal, who is the second wife of the first defendant, is the necessary party and without her presence, the suit cannot be effectively adjudicated. Based on the written statements, the plaintiffs have filed an application in I.A.No.364 of 2010 under Order 1



and Rule 10(2) and Section 151 of the Code of Civil Procedure seeking the impleadment of the said Rengammal as proposed the 8th defendant in the suit. After hearing both sides, the application was dismissed on 06.04.2011, Challenging the correctness of the order, this Civil Revision Petition is filed.

3.Mr.G.Venugopal, learned counsel appearing for the petitioners has submitted that the proposed 8th respondent Rengammal is the proper and necessary party to be impleaded in the suit. He has also specifically submitted that since the plea has been raised in the written statement, without impleading the said Rengammal, who is the second wife of the first defendant, the suit itself would be affected for non-joinder of necessary party. In the mean time, the first defendant has passed away and his legal representatives have been impleaded in this Civil Revision Petition.

4.Mr.Vijayanand, learned counsel representing the proposed 8th defendant has no objection to implead the 8th respondent as one of the defendants in the suit.

5.In view of the above fact, this Court finds that the order of the Trial Court itself is liable to be set aside. Because the real issue, which is involved in this subject matter, has not been fully gone into. Accordingly, the Civil Revision Petition is liable to be allowed.

6.In the result, the Civil Revision Petition is allowed and the impugned order dated 06.04.2011 is set aside and the application in I.A.No.364 of 2010 is allowed. The Trial Court is directed to make necessary amendment in the plaint and to dispose of the suit within a period of 3 months from the date of receipt of a copy of this order. No order as to costs. Consequently, connected M.P.is closed.

Sd/-

Assistant Registrar(records)

/True copy/

Sub AssistantRegistrar

To

The Principal District Judge, Virudhunagar.

+1cc to M/s.K.Hemakarthiskeyan, Advocate SR.No.71002

+1cc to Mr.M.P.Senthil, Advocate SR.No.71108

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