

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.01.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.4814 of 2015
and M.P.No.1 of 2015

1.Karthikeyan
2.Thamiz

.. Petitioners/Plaintiffs

Vs.

1.Nagarajan
2.Chinnathambi

.. Respondents 1 & 2/
Third Parties

3.Ayyappan
4.Sundaramoorthy

.. Respondents 3 & 4/Defendants

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 20.08.2015 in I.A.No.141 of 2015 in O.S.No.140 of 2012 on the file of the Principal Sub-Court, Villupuram.

For Petitioners : Mr.T.Dhanyakumar

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 20.08.2015 in I.A.No.141 of 2015 in O.S.No.140 of 2012 on the file of the Principal Sub-Court, Villupuram.

2.The revision petitioners herein as the plaintiffs filed a suit in O.S.No.140 of 2012 for declaration of title and for permanent injunction restraining the defendants from interfering in any manner with the plaintiffs' peaceful possession and enjoyment of the suit property and other reliefs. In the plaint pleadings, the plaintiffs stated that the suit property was purchased by the grand mother of the first plaintiff on 23.11.1914 and she enjoyed the properties till her death. In the second item of the property, joint patta has been issued in favour of the first plaintiff's father namely, Duraisamy and his brother viz., Govindasamy in the year 1974. Thereafter, they enjoyed the property jointly. Since the said Govindasamy died issue less, father of the first plaintiff alone has been in possession and enjoyment of the said property. It was further stated that the defendants have no right over the suit property and now the first defendant has fabricated a sale deed as if he purchased the suit property and on that basis, the defendants attempted to interfere with the plaintiffs' peaceful possession and enjoyment of the suit property. Therefore, the plaintiffs forced to file the suit for the aforestated reliefs.

3.The defendants filed a detailed written statement and contesting the suit. During pendency of the suit, the children/sons of the said Govindasamy filed an application in I.A.No.141 of 2015 under Order 1 Rule 10 C.P.C. to implead themselves as parties to the suit stating that in the plaint averments, it was stated that their father Govindasamy died issue less. But Govindasamy died intestate leaving behind his two sons, wife and a daughter viz., Kasiammal. The said Kasiammal also died intestate leaving behind her husband Jayaraman, four sons and two daughters. So the proposed parties are necessary parties to the suit for proper adjudication.

4.The trial Court after hearing both sides, allowed the application, against which, the present revision has been preferred by the plaintiffs.

5.Learned counsel for the revision petitioners submits that the plaintiffs/revision petitioners have not sought for any remedy against the children of Govindasamy. Now the plaintiffs' side evidence has been over and the suit is posted for defendants' side evidence, at this stage, the third parties have come forward with the present application to implead themselves as parties to the suit

stating that they are sons of Govindasamy. He further submits that the proposed parties have no nexus with the suit property. That factum was not considered by the trial Court. Therefore, he prayed for allowing the revision petition.

6.At the time of admission, argument of the learned counsel for the revision petitioners is heard in length.

7.In the plaint averments, it was stated that Govindasamy died issue less. According to the proposed parties/respondents 1 and 2 herein, Govindasamy died intestate leaving behind his wife, two sons and one daughter viz., Kasiammal. The said Kasiammal also died intestate leaving behind her husband Jayaraman, four sons and two daughters. Therefore, the sons of Govindasamy filed an application to implead themselves as defendants 3 and 4 in the suit for proper adjudication.

8.Now the point to be decided is that whether the proposed parties are necessary parties for proper adjudication? Admittedly, the suit is filed for declaration of title and injunction. In para-1 of the plaint itself, it was specifically stated that in Item No.2, joint

patta has been issued in the name of Duraisamy and Govindasamy in the year 1974. Further, it was specifically stated that Govindasamy died issue less. As already stated that it is a suit for declaration of title and injunction, wherein, the proposed parties are necessary parties for proper adjudication.

9. Now it is appropriate to incorporate Order 1 Rule 10(2) C.P.C., which runs as follows:

“(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 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.”

10. Considering the facts and circumstances of the case, in the plaint's pleading itself, it was specifically stated that in item No.2, joint patta has been issued in the name of Govindasamy and first plaintiff's father Duraisamy. Further it was stated that Govindasamy died issue less. But whereas the proposed parties/respondents 1 and 2 herein stated that they are children of Govindasamy. Once the suit is filed for declaration of title and injunction, children of Govindasamy are necessary parties to the suit and they have to be impleaded as defendants 3 and 4 in the suit for proper adjudication. Even though the revision petitioners/plaintiffs denied that the proposed parties are not children of Govindasamy, in my view, whether they are children of Govindasamy or not, have to be decided only at the time of trial. Though the case is posted for defendants' side evidence, the Court has discretion to implead the proposed parties for proper adjudication at any time. So the trial Court has considered all the aspects in proper perspective manner and came to the correct conclusion, therefore, the order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed. The civil revision petition deserves to be dismissed and it is hereby dismissed.

11.In the result, the Civil Revision Petition stands dismissed.
No costs. Consequently, connected Miscellaneous Petition is closed.

06.01.2016

Index:Yes/No

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To

The Principal Sub-Court, Villupuram.

R.MALA,J.

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