

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) No.1969 of 2016
& Crl.M.P.No.10354 of 2016

1. Ms.P.Vasundhara Devi @ Kanchana
2. Mrs.V.Girija Pandey

... Petitioners

VS

Mr.K.V.R.Sastry (Deceased)
1. Mrs.J.Lalithakumari
2. Mrs.Y.Nagalakshmi
3. Mrs.V.Uma Devi

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records pertaining to the order passed in I.A.No.17310 of 2015 in O.S.No.1857 of 2013 on the file of the V Assistant Judge, City Civil Court, Chennai dated 29.04.2016 and set aside the same and direct the trial court to conduct full fledged enquiry by let in evidence in the impleading petition under Order XXII Rule 4 and 5 of Code of Civil Procedure.

For Petitioner : Mr.V.Srinivasababu

For Respondents : No appearance R1 to R3

ORDER

This revision challenges the order of learned V Assistant Judge, City Civil Court, Chennai passed in I.A.No.17310 of 2015 in O.S.No.1857 of 2013 dated 29.04.2016.

2. One K.V.R.Sastry, since deceased, filed O.S.No.1857 of 2013 informing the property as gifted to him by one Thayarammal and sought permanent injunction. Respondents, who are his sisters sought to implead themselves as legal representatives by way of I.A.No. No.17310 of 2015. On such application being allowed, defendants have preferred the present revision.

3. Heard learned counsel for petitioner. None appear for the respondents.

4. A perusal of the order under challenge reveals that in the face of petitioners/defendants' contention that the persons who sought to implead themselves as legal heirs of the deceased plaintiff were not so, the provision of Or.22 R.5 CPC which reads as follows has not been followed :

“5. Determination of question as to legal representative -

Where a question arises as to whether any persons is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court :

Provided that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefor, and the Appellate Court may take the same into consideration in determining the question.”

Hence, without going into the merits of the rival contentions, this Court would set aside the order under challenge and require the Court below to consider I.A.No.17310 of 2015 in O.S.No.1857 of 2013 afresh after compliance with the provision herein above reproduced when a claim of legal heirship is contested, an enquiry would be necessary.

The Civil Revision Petition, accordingly, is ordered. Consequently, connected miscellaneous petition is closed.

21.07.2016

Index:yes/no
Internet:yes
vrc/gm

To

The V Assistant Judge,
City Civil Court,
Chennai.

C.T.SELVAM, J

vrc/gm

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