

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2016

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P(PD) No.2005 of 2012
and
M.P.No.1 of 2012

Bhuvaneswari

... Petitioner

vs.

1.Dhanam
2.T.P.Murugesan

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal Order dated 14.11.2011 in I.A.No.710 of 2011 in O.S.No.205 of 2004 on the file of the District Munsif, Attur.

For Petitioner : Mr.R.Thiagarajan

For 1st respondent : Mr.T.Murugamanickam

For 2nd respondent : No appearance

ORDER

This Civil Revision Petition arises against the fair and final order passed by the District Munsif, Attur, in I.A.No.710 of 2011 in O.S.No.205 of 2004, dated 14.11.2011.

2. The first respondent herein filed the suit in O.S.No.205 of 2004 on the file of the District Munsif, Attur, praying for the relief of specific performance by directing the defendant (second respondent herein) to execute the sale deed in respect of the suit property in favour of the plaintiff or as per her direction.

3. The plaintiff (first respondent herein) filed an Interlocutory Application in I.A.No.710 of 2011 in O.S.No.205 of 2004 seeking to implead the revision petitioner herein as a party in the suit. The first respondent/plaintiff has also adduced reasons therein that the revision petitioner/proposed party filed a suit in O.S.No.121 of 1996, which was renumbered as O.S.No.222 of 2004, against the second respondent and his son, namely, Karunakaran, for partition in respect of the same suit properties. The defendant/second respondent herein did not disclose the pendency of the present suit pending for specific performance in that suit. A decree was also obtained in the aforesaid suit in a collusive and fraudulent manner as she is the daughter of the second respondent/defendant. Hence, according to the first respondent herein, the revision petitioner is a necessary party to the suit.

4. Considering the facts and circumstances of the case and the arguments of the learned counsel for the parties, the trial Court allowed the

application in I.A.No.710 of 2011 in O.S.No.205 of 2004 filed by the plaintiff/first respondent.

5. Aggrieved over the same, the present Civil Revision Petition has been filed by the proposed party/revision petitioner herein.

6. Heard the learned counsel for the petitioner and the learned counsel for the first respondent and perused the impugned order.

7. It is the contention of the plaintiff/first respondent that the revision petitioner being the daughter of the defendant had colluded with the defendant and filed a suit and obtained decree against the defendant who had already executed an agreement with the plaintiff for sale of the same suit property and had also received a sum of Rs.10,000/- as advance against the total sale consideration of Rs.75,000/- and the plaintiff also took possession of the suit property on 19.10.1995. The Trial Court, after considering the facts and circumstances of the case and the submissions made in the case, held that the revision petitioner/proposed defendant is a necessary party to the present suit as the revision petitioner had filed the suit in O.S.No.222 of 2004 against the defendant and his son and obtained preliminary decree against the same suit property. I do not find any infirmity in the findings of the Trial Court in view of the above facts. The revision petitioner can very well rebut the allegation of the plaintiff/first respondent in the suit

proceedings if she is added as a party to the suit.

8. In the case of ***V.L.Dhandapani and others vs. Revathy Ramachadnran and others reported in 2014 (4) CTC 814***, a Division Bench of this High Court, following the ratio of various decisions of the Hon'ble Supreme Court, held that transferee *pendente lite* can be added as a party to suit.

9. In the case of ***Kalaivani @ Devasena and another versus Ramu and others reported in (2016) 5 MLJ 123***, I have held that Order I Rule 10(2) of Code empowers Court to implead party at any stage of proceedings either as plaintiff or defendant upon or without application of either party, whose presence appears to be necessary in order to enable Court effectually and completely to adjudicate upon and settle questions involved in the suit. In Paragraph 11 of the judgment, it has been held as follows:-

“11. The respondents 9 and 10 are the daughters of the respondents 1 and 2. So, the apprehension of the plaintiffs is that respondents 9 and 10 also have right to claim over the property by virtue of the Hindu Succession Amendment Act, 2005. A necessary party is one without whom no order can be made effectively; a proper party is one whose presence is necessary for a complete and final decision on the question involved in the proceedings. This Hon'ble Court in Ganduri

Koteshwaramma and another v. Chakiri Yanadi and another 2011 (6) CTC 102 : AIR 2012 SC 169 : (2011) 9 SCC 788 : LNIND 2011 SC 2872 : (2012) 1 MLJ 175 has held as follows:-

“declaration in Section 6 that daughter of coparcener shall have same rights and liabilities in coparcenary property as she would have been a son is unambiguous and unequivocal. There is no impediment to pass more than one preliminary decree if after passing of preliminary decree events have taken place necessitating the readjustment of shares as declared in preliminary decree. The Court has always power to revise the preliminary decree or pass another preliminary decree if situation in changed circumstances so demand-suit for partition continues after passing of preliminary decree and proceedings in Suit get extinguished only on passing of final decree – Respondents/Sisters are entitled to claim share in coparcenary property even after passing of preliminary decree in suit for partition.

Therefore, Order I, Rule 10 (2) empowers this Court to implead any party at any stage of the proceedings either as plaintiff or defendant upon or without any application of either party, whose presence appears to be necessary in order to enable the Court effectually and completely to

adjudicate upon and settle all the questions involved in the suit.

10. In the light of the facts of the case and the decisions referred to above, to meet the interest of justice, I am not inclined to interfere with the impugned order of the trial Court and the order of the Trial Court is confirmed. Accordingly, the Civil Revision Petition is dismissed. No order as to costs. Connected Miscellaneous Petition is closed.

05.08.2016

Index : yes / no

Internet :yes / no

asvm

To

The District Munsif, Attur.

D.KRISHNAKUMAR, J.

(asvm)

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