

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20.09.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.2965 of 2016 and
CMP.No.15004 of 2016

1.J.Mallika @ Maheswari
2.J.Ganesh

...Petitioners

versus

1.S.Koteeswaran
2.K.Hemapriya
3.K.Goutham Minor rep. by his father
and natural guardian S.Koteeswaran
the plaintiff herein
4.R.Padmanabhan
5.RP Ramesh
6.P.Rajalakshmi
7.D.Gajalakshmi
8.B.Sundari

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 29.04.2016 made in I.A.No.9266 of 2014 in O.S.No.12167 of 2010 on the file of the Hon'ble III Additional City Civil Court, Chennai.

For Petitioners : Mr.N.Vanaraj

For Respondents : Mr.V.M.Venkatramana for R1

ORDER

The application filed by the first respondent to implead respondents 2 and 3 was allowed by the Trial Court. The order is under challenge at the instance of defendants 1 and 2 primarily on the ground that proposed parties

are not having any share in the property, which is the subject matter of the suit in O.S.No.12167 of 2010.

2. The learned counsel for the petitioners contended that the proposed parties have no right in respect of the suit property and as such, they are not necessary parties. According to the learned counsel, in view of Section 6 of the Hindu Succession Act, 1956 and statutory prescription regarding notional partition, there is no question of claiming a share by the respondents 2 and 3.

3. The learned counsel for the first respondent on caveat justified the order passed by the learned Trial Judge.

4. The first respondent filed the application in question to implead respondents 2 and 3 as parties to the suit for partition. The first respondent contended that respondents 2 and 3 are also entitled to a share in the property. The first respondent made it clear that altogether the parties will be entitled to 1/3 share.

5. The petitioners are aggrieved primarily on the ground that the impleading parties are not having any interest in the suit property. The said question requires to be decided only during the course of trial. The suit is one for partition. The question as to whether either the first respondent or respondents 2 and 3 are having a share in the property is required to be

decided taking into account the evidence adduced by the parties. The first respondent and the newly impleaded respondents 2 and 3 are bound to prove that they are entitled to a share in the property.

6. It is not as if the petitioners herein are bound to prove the negative. It is always open to the petitioners to file additional written statement in the light of the order impleading the respondents 2 and 3 as parties and the amendment to the plaint. I am therefore of the view that there is no merit in the contention taken by the petitioners with respect to the impleading of respondents 2 and 3.

7. In the up shot, I dismiss the civil revision petition. No costs. Since the Trial Court has already amended the plaint, reasonable opportunity should be given to the petitioners to file additional written statement. Consequently, connected miscellaneous petition is closed.

20.09.2016

Index:Yes/No
svki

To

The III Additional City Civil Court, Chennai.

K.K.SASIDHARAN, J.

(svki)

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