

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 10.11.2016

PRONOUNCED ON : 17.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

C.R.P(PD)No.2344 of 2013 and M.P.No.1 of 2013

P.V.Balasubramaniam

.. Petitioner

Vs.

- 1.S.Amaravathy
- 2.Smt.V.Baggiyam
- 3.P.V.Ramalingam
- 4.P.V.Rajarathinam
- 5.P.V.Thirunavukkarasu
- 6.Smt.S.Rajathi
- 7.S.Savithiri
- 8.R.Vijaya Chakravarthy
- 9.R.Raja @ Palaniyandi
10. R.Seeni@ Seenivasan
11. T.Jagadeesan
12. T.Kameshwaran
13. The Sub Registrar,
Ammamet,
Salem - 3.

.. Respondents

(Respondents 2 to 13 herein given up
as un-necessary parties)

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 22.08.2012 made in I.A.No.136 of 2011 in O.S.No.406 of 2010 on the file of the II Additional Sub Court, Salem.

For Petitioner : Mr.T.Murugamanikkam

For Respondent - 1 : Mr.V.R.Rajasekaran

For Respondents 2 to 13 - given up

ORDER

The present Civil Revision Petition is filed by the revision petitioner, who is the second defendant in the suit, against the fair and final order passed in I.A.No.136 of 2011 in O.S.No.406 of 2010 dated 22.08.2012 allowing the interim application by impleading the petitioner in Interim Application as legal representative of the deceased plaintiff.

2. Heard learned counsel for both sides.

3. The original suit in O.S.No.48 of 2008 was filed by one P.V.Shanmugasundaram, the plaintiff for partition of the suit property. During the pendency of the suit proceedings, the plaintiff died. The deceased plaintiff's wife originally filed interim application in I.A.No.639 of 2009 in O.S.No.48 of 2008 under Order 22 Rule 3 read with Section 151 of CPC to implead her as legal representative of her deceased husband/plaintiff and to proceed with the case. The said interim application was allowed, against

which, the Civil Revision Petition in CRP(PD)No.4197 of 2009 has been filed by one of the brothers of the deceased plaintiff stating that no notice was issued to him, while allowing the said interim application. The civil revision petition was allowed by order dated 29.11.2010 and this Court has set aside the order passed in I.A.No.639 of 2009 and directed the lower court to issue notice to the other legal heirs and respondents in the interlocutory application and pass orders on merits.

4. Thereafter, the present Interim Application was filed in I.A.No.136 of 2011. Notice to the parties was taken and on hearing, by order dated 22.08.2012, the same was allowed. The petitioner in Interim Application was directed to be impleaded as legal representative of the deceased plaintiff. However, the same was sought to be resisted by the respondents therein, particularly, the Civil Revision Petitioner herein questioning the relationship of the petitioner in Interim Application with the deceased plaintiff. According to them, the petitioner had not filed any document to show that she is the wife of Shanmugasundaram. Since the burden of the proof was on the petitioner, she had to discharge the said burden and therefore, requested for dismissal of the Interim application.

5. However the Court below dismissed the contention that the enquiry under Order 22 Rule 3 of CPC is summary in nature. Therefore, oral and documentary evidence need not be let in detail. The issue of impleading legal representatives being a question of fact and law, the same can be decided at the time of trial and what ever objections, the respondents in Interim Application could have, the same can be raised during the trial of the suit. In such view of the matter, the Interim Application was allowed.

6. As against the above order, the present Civil Revision Petition is filed. The counsel for the revision petitioner drew this Court's attention to the specific prohibition under Order 22 Rule 5 of CPC stating that the provision is mandatory and who can be the legal representatives will have to be decided before they are brought on record. In support of the contentions, the counsel relied on the decision reported in **2009 3 LW 198 of the Hon'ble Supreme Court of India Jaladi Suguna(Deceased) Through LRs. Vs. Satya Sai Central Trust & Others** . The said decision squarely supports the contention of the revision petitioner.

7. Be that as it may. The counsel for the respondents fairly

submitted that the issue of impleading legal representatives in the suit can be decided first before proceeding with the suit. Recording the submissions of the counsel, this Court is of the view that the Trial Court can be directed to frame preliminary issue as to the entitlement of the first respondent herein, who was petitioner in the said Interim Application being impleaded in the suit as the issue goes to the root of the matter as to who can represent the deceased. In such view of the matter, this Court directs the II Additional Subordinate Judge, Salem to frame a preliminary issue of the relationship of the first respondent herein/the petitioner in I.A.No.136 of 2011 in O.S.No.406 of 2010 with the deceased P.V.Shanmugasundaram, the original plaintiff and pass final orders thereupon and proceed with the trial of the suit thereafter. The above exercise shall be completed within three months from the date of receipt of a copy of the order. In the above terms, the Civil Revision Petition is disposed of. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

.2016

Index : No
Internet : Yes

To

1. The Sub Registrar, Ammapet, Salem - 3.
2. The II Additional Sub Court, Salem.

V.PARTHIBAN, J.

adl

**Order made in
C.R.P(PD)No.2344 of 2013
and M.P.No.1 of 2013**

17.11.2016
<http://www.judis.nic.in>