

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.12.2016

Coram

The Honourable MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD.No.3276 of 2016

and

C.M.P.No.16648 of 2016

1. Panjamiammal
2. Chinnappan
3. Chinnusamy
4. Ayyamperumal
5. Chinnappan
6. Ramar

... Petitioners

vs.

1. Chinnammal
2. Madaiyan
3. Ayyamperumal
4. Chinnappan
5. Ayithal
6. Rajammal
7. Palaniappan
8. Chinnappa Gounder
9. Sevi
- 10.Chinna Ayyadurai

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 17.08.2016 passed by the learned District Munsif, Sankari in I.A.No.331 of 2016 in O.S.No.177 of 2011.

For Petitioners : Ms.M.Thanu

For Respondents : Served - No appearance

ORDER

The plaintiffs are the revision petitioners. Aggrieved by the order, passed by the Court below in dismissing the application filed by them to implead the legal heirs of the deceased Ayyadurai as proposed parties to the suit, the present revision has been filed.

2. The petitioners/plaintiffs filed the suit in O.S.No.177 of 2011 as against the defendants 1 to 6 for a declaration declaring that they are entitled to use the suit cart track; for an injunction restraining the respondents/defendants from interfering with their peaceful possession and for a declaration declaring that the partition deed dated 17.08.2010 entered into between the respondents/defendants 1 and 5 as null and void.

3. The petitioners/plaintiffs also filed an application before the Court below in I.A.No.331 of 2016 seeking to implead the respondents 7 to 10 herein as proposed parties in the suit. It is the case of the petitioners/plaintiffs that one Ayyadurai had purchased the suit property on 15.06.1942, who died in the year 2009 and the proposed

parties are the legal heirs of the said Ayyadurai. The suit property is lying in survey No.455/2 of Iruppali Village, Edapadi Taluk, Salem, which is a cart track having 140 feet in length on North South and 10 feet breadth on East West. It is further stated by the petitioners that the said Ayyadurai also has property in survey No.455/2. Hence the above application has been filed seeking to implead them as the defendants in the suit. As the said application was dismissed by the Court below, the present revision is filed.

4. Heard the learned counsel for the petitioner. Despite notice being served, there is no representation on behalf of the respondents either in person or through the counsel.

5. It is contended by the learned counsel for the petitioners that since the said Ayyadurai also has ownership in the suit property in Survey No.455/2, it is necessary to implead his heirs as party to the suit.

6. A reading of the affidavit filed in support of the impleading application would show that nothing has been mentioned as to in what way the proposed parties are necessary to the suit, when there is no

cause of action pleaded against them. It is also not the case of the petitioners that the proposed parties had denied their title and therefore, they should be made as a party. Though it is stated that the said proposed parties are the owners of the land by virtue of the sale deed dated 15.06.1942 even the said document has not been filed by the petitioners. Since the suit dispute relates to a cart track, unless the said document is filed, the existence of the cart track also cannot be ascertained. Even assuming that the proposed parties would be necessary for the proper adjudication of the suit, there is no reason explained as to why, they were not made as parties in the plaint at the time of filing of the suit, when the document is dated 1942.

7. Impleading of necessary party can be allowed only on the following grounds:

(i) If the Court feels that without the presence of the said parties, proper adjudication cannot be done in the matter;

(ii) Any adjudication in their absence would seriously prejudice their rights or the adjudication of the matter otherwise, would take away the rights of the proposed parties.

In the absence of any of the above ingredients, the Court below has rightly dismissed the application filed by the petitioners seeking to implead the respondents 7 to 10 herein in the above suit filed by them and I find no reason to interfere with the same.

8. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

19.12.2016

vj2

Index: Yes/No

Internet: yes

To

The District Munsif, Sankari.

PUSHPA SATHYANARAYANA.J

vj2

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