

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2016

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THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.794 of 2008

and

M.P.No.1 of 2008

K.P.C.Kandasamy

... Petitioner

Vs

1. Padmavathy
2. Sampoornam
3. Bhavaneswari
4. Jothimani
5. Revathi
6. Muthuammal @ Ammasai
7. Gururaj

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 10.12.2007 in I.A.No.445 of 2007 in O.S.No.450 of 2005 on the file of Additional District and Sessions Judge, Fast Track Court-II, Coimbatore.

For Petitioner : Mr.Silambanan, Senior Counsel
for M/s.Profex Associates

For Respondents 1 to 5: Mr.A.Thiagarajan

For Respondents 6 to 8 : No Appearance

ORDER

The arguments advanced by Mr.Silambanan, learned Senior Counsel appearing for the petitioner on behalf of M/s.Profex Associates and by Mr.A.Thiagarajan, learned counsel for the respondents 1 to 5 are heard.

2. Though the respondents 6 to 8 have entered appearance through Counsel, there is no representation for them. Upon hearing the submissions made on behalf of the petitioner and the respondents 1 to 5, this Court passes the following order.

3. The plaintiff in the original suit O.S.No.450 of 2005 on the file of the Additional District Judge, Fast Track Court III, Coimbatore, is the petitioner in the present revision. The suit was filed for specific performance based on an agreement of sale deed, dated 03.12.2014 against the respondents 6 to 8 herein, who have been arrayed as defendants 1 to 3 in the Original Suit. Respondents 6 to 8 are said to have entered into an agreement with the petitioner on the basis of their claim that they are the testamentary legal heirs of late Vellingiri Mudaliar, the husband of the 6th respondent and father of the 7th and 8th respondents. The respondents 1 to 5 are none other than the

daughters of the said Vellingiri Mudaliar. Contending that their father died intestate and they do have a share equivalent to the shares of each one of the respondents 6 to 8 herein, the respondents 1 to 5 filed an application under Order I Rule 10 C.P.C as I.A.No.445 of 2007 for their impleadment as defendants in the said suit.

4. The said application was resisted by the petitioner herein / plaintiff on the basis of his contention that in a suit for specific performance, title of the vendor under the agreement shall not be gone into. When the same has not been made an issue by either the vendor or the purchaser, the persons who are not parties to the agreement cannot seek to get impleaded as parties, even though they may claim to be real owners or to be having a share in the same.

5. The learned trial Judge, after hearing both sides, rejected the objection raised by the petitioner / plaintiff and allowed the application I.A.No.445 of 2007, impleading respondents 1 to 5 herein as defendants 4 to 8 in the original suit. The said order is challenged by the petitioner herein / plaintiff in the present Civil Revision Petition filed under Article 227 of the Constitution of India.

6. After the filing of the Civil Revision Petition and pending disposal of the same, the sixth respondent Muthammal @ Ammasai died on 14.10.2004. Since her two sons are already on record in some other capacities, the proceeding has not abated. In addition, the respondents 1 to 5 are also the legal representatives of the 6th respondent Muthammal @ Ammasai. Their presence will also prevent the Civil Revision Petition from getting abated. In the light of the above said development, the contention raised on behalf of the petitioner has got to be considered.

7. It is the contention of Mr.Silambanan, learned Senior Counsel appearing for the petitioner that respondents 1 to 5, being strangers to the suit agreement for sale, cannot be impleaded as party defendants simply because they stake claim to the suit properties and that the order of the trial Court dated 10.12.2007 impleading them as party defendants under Order I Rule 10 C.P.C is erroneous and liable to be set aside.

8. However, Mr.A.Thiagarajan, learned counsel for the respondents 1 to 5 submits that the removal of respondents 1 to 5 from the array of parties has now become academic, because they are

entitled to be impleaded as the left out legal representatives of Muthammal @ Ammasai, if not, in their individual capacity as shareholders claiming against their mother herself. Pointing out the said aspect, Mr.A.Thiagarajan, learned counsel for the respondents 1 to 5 submits that the impleading of the respondents 1 to 5 in the suit has got to be confirmed.

9. As an answer to the said submission, Mr.Silambanan, learned Senior Counsel argues that the petitioner shall have no objection for keeping the respondents 1 to 5 on record as persons impleaded in their capacities as legal heirs of Muthammal @ Ammasai, but their defence in the suit should be confined to the defence taken by Muthammal @ Ammasai. It is the further contention of the learned Senior Counsel for the petitioner that the respondents 1 to 5 may be allowed to continue as party defendants not in their individual capacity, but as the legal heirs of Muthammal @ Ammasai with the restricted right to canvass the plea raised by Muthammal @ Ammasai alone.

10. The above said submission made by the learned Senior Counsel appears at the outset to be tenable. At the same time, this Court has to render complete justice by clarifying that the mere fact

that the respondents 1 to 5 are allowed to continue on record only in their capacity as legal representatives of Muthammal @ Ammasai, will not in any way take away or abridge their right in their personal capacity, which they have claimed in their own suit, namely, O.S.No.481 of 2005 pending on the file of the very same trial Court. However, in order to avoid multiplicity of proceedings, it shall be just and proper to direct both the cases to be tried together.

11. The contention raised by the learned Senior Counsel to restrict the plea of respondents 1 to 5 in O.S.No.450 of 2005, will be a mere technicality without any effect in view of the fact that respondents have filed another suit for partition, which is also pending in the very same Court, in which, they have raised their own plea in their individual capacity. Hence, this Court comes to the conclusion that there is no need to interfere with the order of the trial Court impleading the respondents 1 to 5 as defendants 4 to 8 in O.S.No.450 of 2005. To render complete justice, it is just and necessary that O.S.No.450 of 2005 filed by the petitioner herein and O.S.No.481 of 2005 filed by the respondents 1 to 5 herein shall be directed to be tried together and disposed of within six months from the date of receipt of a copy of this order.

12. In the result, the Civil Revision Petition is disposed of, directing the trial Court to try O.S.No.450 of 2005 and O.S.No.481 of 2005 together and dispose of both suits expeditiously, in any event, within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

24.02.2016

Index: Yes/No
Internet: yes/No

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To

The Additional District and Sessions Judge,
Fast Track Court-II, Coimbatore.

P.R.SHIVAKUMAR, J.

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