



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR

CRP (MD).No.1592 of 2016

and

C.M.P.(MD) No. 7763 of 2016

P. Ochathevar :Petitioner/Petitioner/ Plaintiff
Vs.

1. S.T. Velandi

2. V. Nagajothi

3. C. Saravanan :Respondents 1 to 3/ 1 to 3 Respondents/
1 to 3 Defendants

O. Karuppaaye Ammal (Died) :Respondent/ 4th Respondent/
Proposed 2nd Plaintiff

4. Poovathi

5. O. Karuppaiah : Respondents 4 and 5/ 5th&6th Respondents/
Proposed 2nd & 3rd Plaintiffs

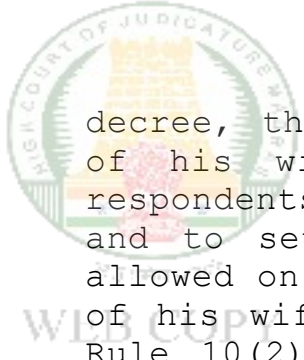
Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the Fair and Decretal order passed by the Learned District Munsif, Periyakulam in I.A.No.253 of 2013 in O.S.No.130 of 2010 dated 17.06.2016.

For Petitioner	: Mr. N. Dilipkumar
For Respondent R1 to R3	: M/s.R. Karthika
For Respondent R4, R5	: No Appearance

ORDER

The Civil Revision Petition is filed to to set aside the Fair and Decretal order passed by the Learned District Munsif, Periyakulam in I.A.No.253 of 2013 in O.S.No.130 of 2010 dated 17.06.2016.

2. According to the petitioner, the revision petitioner / plaintiff filed O.S.No.130 of 2010 against the respondents 1 to 3 praying for relief of declaration of title and perpetual injunction in respect of the suit property. The defendants failed to appear in the suit and they were set ex parte by order dated 07.03.2011. Later the suit was decreed ex parte in favour of the petitioner on 15.03.2011 and subsequent to the judgment and



decree, the petitioner executed the deed of settlement in favour of his wife Karuppaaye ammal on 03.06.2011. Thereafter, the respondents / defendants filed an application to condone the delay and to set aside the ex parte judgment and decree and it was allowed on 21.03.2012. Later having gifted the property in favour of his wife and he has filed I.A.No. 253 of 2013 under Order 1 Rule 10(2) of CPC r/w. Section 151 praying to implead his wife Karuppaaye ammal as second plaintiff. The proposed second plaintiff viz., Karuppaaye ammal, wife of the petitioner died on 07.05.2004 and hence, I.A.No. 367 of 2014 filed by the petitioner to implead the legal heirs of Karuppaaye ammal. The said application filed by the petitioner was allowed on 06.03.2015. But, subsequently, the application in I.A.No. 253 of 2013 was dismissed on the ground that such application was filed belatedly. Against the said order the petitioner has filed the present revision.

3. Per contra, the learned counsel for the respondents submitted that the case is posted for framing of issues. At this stage, the present application in I.A.No. 253 of 2013 under Order 10(2) of CPC r/w. Section 151 filed by the petitioner and the same has been rightly dismissed by the trial Court.

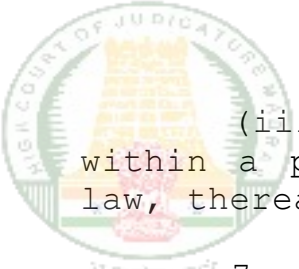
4. I have heard the learned counsel appearing on either side and perused the materials available on record.

5. It is an admitted fact that the suit has been filed in O.S.No.130 of 2010 for declaration and perpetual injunction and the petitioner filed the present application in I.A.No.253 of 2013 to implead his wife as second plaintiff and the said application was dismissed on ground of filing belatedly. According to the petitioner, whether the proposed plaintiffs are necessary and proper parties to the suit. Further dispute arising between the parties. The proposed plaintiffs are necessary parties in the suit and the Court below has allowed the application in I.A.No.376 of 2015 to implead the respondents 5 and 6 as parties in the said application. The instant application filed by the petitioner was dismissed by the Court below erroneously, which is unsustainable in law. They are also necessary parties in order to avoid multiplicity of proceedings.

6. In view of the facts and circumstances of the case, this Court is inclined to pass the following order:-

(i) the order passed in I.A.No.253 of 2013 in O.S.No.130 of 2010, dated 17.06.2016.is hereby set aside and the application in I.A.No.253 of 2013 is allowed.

<https://hcservices.ecourts.gov.in/hcservices/> liberty is granted to the petitioner to carry out the amendment before the trial Court in the above said suit,.



(iii) the trial Court is directed to dispose of the suit within a period of six months on merits and in accordance with law, thereafter.

7. In the result the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Record)

/True Copy/

Sub Assistant Registrar

To

The learned District Munsif, Periyakulam

+1cc to M/S.R.Karthika, Advocate SR.No.66540

+1cc to M/S.N.Dilip Kumar, Advocate SR.No.66729

trp

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