



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

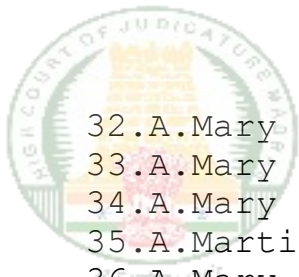
C.R.P (MD) No.559 of 2016 (PD)
and
C.M.P. (MD) .No.2413 of 2016

1.Gnanasoundari
2.John Delbin
3.Devakumari

... Petitioners

Vs.

1.A.Mary
2.Viola Saralakumari
3.Jini Kumari
4.Sharmila Kumari
5.Anthoni
6.Devaraj
7.Anthony
8.Seethalakshmi
9.Saratha Devi
10.Susheela Devi
11.Mangala Devi
12.Sulochana Devi
13.Nirmala Devi
14.Indira Devi
15.Natarajamoorthy
16.Bhuvaneswari Devi
17.R.Sumathi
18.C.Rajendran
19.C.Rajeswari
20.C.Rajagopal
21.Ambikeswari
22.Illageswari
23.C.Radhakrishnan
24.Rajamohan
25.P.Cicily
26.J.Jaya
27.Xavier
28.Lity
29.Jerome
30.Arul Mary
31.A.Maretin Jayaseelan Marin Jeyaseelan



32.A.Mary Feeda
33.A.Mary Frina
34.A.Mary Janitha
35.A.Martin Jeyasekhar
36.A.Mary Ritha
37.A.Mary Pushpalatha
38.A.Mary Flora
39.A.Martin Jayasingh
40.Tulsi
41.Desla
42.Anushia

... Respondents

Prayer : This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order, dated 05.03.2015, passed by the learned Principal District Munsif, Kuzhithurai, made in I.A.No.122 of 2015 in O.S.No.9 of 1973.

For Petitioners : Mr.K.N.Thampi

ORDER

This Civil Revision Petition is filed, against the fair and decretal order, dated 05.03.2015, passed by the learned Principal District Munsif, Kuzhithurai, made in I.A.No.122 of 2015 in O.S.No.9 of 1973.

2. The petitioners are the defendants 46 to 48 in O.S.No.9 of 1973 and respondents in I.A.Nos.88 and 89 of 2013 for passing of final decree and for appointment of Advocate Commissioner to effect partition. The respondents 1 to 4 are the plaintiffs. The fifth defendant did not contest the Suit and he died. In the final decree application in I.A.Nos.88 and 89 of 2013 also he did not appear and contest, even after service of notice by paper publication. The fifth defendant is dead now. The respondents 1 to 4 filed I.A.Nos.121 and 122 of 2015 to exempt them, from taking steps to implead legal representatives of the fifth defendant, as fifth defendant left the place long ago and he is one of the non contesting defendants/respondents in the Suit and final decree application.

3. The petitioners herein filed counter affidavit and opposed the same. According to the petitioners, the fifth defendant has 1/6th share as per the preliminary decree passed. Therefore, the legal representatives of the fifth defendant must be impleaded in the final decree proceedings and they are necessary parties. In the absence of legal representatives of a sharer, no effective final decree can be passed in the suit and prayed for dismissal of the applications.

<https://hcservices.ecourts.gov.in/hcservices/> The learned Judge considering the facts and materials on record and legal positions, allowed the applications, filed by the respondents 1 to 4 by order dated 05.03.2015. Against the said



order the present Civil Revision petition is filed.

5. The learned counsel for the petitioners contended that it is not the definite case of the respondents 1 to 4 that fifth defendant is dead. According to them, fifth defendant left his place long ago and settled down in north of Kerala and now he and his family has no conduct with the other parties in the Suit. The fifth defendant is having share in the property. Therefore, the legal representatives of the fifth defendant is necessary parties in the final decree proceedings. The Court below failed to see that I.A.No.346 of 2015 filed by the petitioners for passing second preliminary decree is pending. The learned Judge erred in holding that right of the legal representatives will not be affected and no prejudice caused to the petitioners.

6. Heard the learned counsel appearing for the petitioners and perused the materials available on record.

7. From the records, it is seen that the fifth defendant remind ex-parte in the Suit for partition and preliminary decree has been passed and the share of the fifth defendant was allowed. The respondents 1 to 4 filed I.A.Nos.88 and 89 of 2013, for passing final decree and appointment of Advocate Commissioner for division of the property. In the said application, notice was served on the fifth defendant by paper publication. Even then, the fifth defendant did not contest the matter. In the circumstances, the respondents 1 to 4 have come out with the applications, stating that the fifth defendant is dead and prayed for exempting them from impleading the legal representatives of the fifth defendant. The learned Judge properly appreciating Order 22 Rule 4 (4) of C.P.C., allowed the application. The contention of the learned counsel for the petitioners that respondents 1 to 4 have not certain about the death of the fifth defendant, is not acceptable. In view of the fact that respondents 1 to 4 have stated that the fifth defendant is died in the affidavit. The petitioners have also not produced any material to show that the fifth defendant is still alive and particulars of the legal heirs of the fifth defendant. The learned Judge has considered all these aspects and materials on record and allowed the applications. Therefore, there is no illegality or irregularity in the said order, warranting interference of this Court. Hence, this Civil Revision Petition is liable to be dismissed.

8. Accordingly, this Civil Revision Petition is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar



To

The Principal District Munsif, Kuzhithurai.

+ONE CC TO MR.K.N.THAMPI, ADVOCATE IN SR.NO.13834/16

CSL/JGB-DP/23.03.2016 :4P/3C

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