

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.04.2017

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CRP.(NPD) No.2838 of 2014
and MP.No.1 of 2014

1. S.Chithra
2. S.Murthy
3. S.Ravikumar

.. Petitioners

Vs

1. J.Loganathan
2. Kuppiammal
3. Halimuthu
4. M.Paraman
5. M.Dharuman

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code praying to set aside the order dated 04.02.2014 in I.A.No.303 of 2011 in A.S.No.8 of 2004 on the file of the District Judge, Nilgiris.

For Petitioners : Ms.S.Nandhini Devi

For Respondents : Mr.S.Kingston Jerold for R1 to R3
No appearance for R4 and R5

ORDER

This Civil Revision Petition is filed seeking to set aside the order dated 04.02.2014 in I.A.No.303 of 2011 in A.S.No.8 of 2004 on the file of the learned District Judge of the Nilgiris at Udthagamandalam.

2.The 1st respondent herein/plaintiff filed the suit in O.S.No.186 of 1999 on the file of the Sub-Court, Nilgiris, for partition of the suit property by metes and bounds and also for allotment of 1/2 share in the suit property. The Trial Court by judgment and decree dated 27.11.2003 dismissed the said suit, against which the 1st respondent herein filed an appeal in A.S.No.8 of 2004 on the file of the District Court at Nilgiris. In the said appeal, the 1st respondent herein/plaintiff filed an Interlocutory Application in I.A.No.303 of 2011 in A.S.No.8 of 2004 seeking to implead the respondents 5 to 8 as defendants 5

to 8 in the appeal suit. The proposed parties are the sisters and sister's son of the plaintiff/1st respondent herein, they are also legal heirs of the deceased Joghee Gowder and they are also interested persons in the suit. Hence the said IA has been allowed by the first appellant Court vide the impugned order dated 04.02.2014. Aggrieved over the same, the present Civil Revision Petition has been filed by the defendants 2 to 4.

3. The learned counsel for the revision petitioners/defendants 2 to 4 submitted that the respondents 2 to 5 have already relinquished their rights; hence, they are not necessary parties in the suit. Therefore, according to the learned counsel for the revision petitioners/defendants 2 to 4 the impugned order passed by the first appellant Court has to be set aside.

4. Per contra, the learned counsel appearing for the respondents 1 to 3 namely the plaintiff and the proposed parties/defendants submitted that the petitioners/defendants 2 to 4 have already filed a Civil Miscellaneous Appeal in C.M.A.No.323 of 2007 before this Court, against the order dated 18.07.2006 passed by the first appellant Court in A.S.No.8 of 2004 remanding the matter to the trial Court. This Court by judgment dated 03.09.2010, after observing that the petitioners herein have no objection for impleading all the daughters of the deceased Joghee Gowder as parties in the first appeal, has allowed the said CMA and remitted the matter to the first appellant Court for disposing of the first appeal on merits and in accordance with law. Under such circumstances, now the petitioners cannot challenge the impugned order passed by the lower appellate Court for impleading the respondents 2 to 5. Hence, no infirmity could be found in the impugned order passed by the lower appellate Court.

5. Heard both sides and perused the materials available on record.

6. The 1st respondent herein has filed the suit in O.S.No.186 of 1999 for partition and for allotment of 1/2 share in the suit property. On 27.11.2003 the said suit was dismissed by the trial Court, against which the 1st respondent herein filed an appeal in A.S.No.8 of 2004 before the learned District Judge, Nilgiris. By an order dated 18.07.2006, the learned District Judge had remanded the matter to the trial Court for impleading other necessary parties also and for fresh consideration. Against the said order, dated 18.07.2006, the petitioners herein have filed a appeal in C.M.A.No.323 of 2007 before this Court. In the said CMA, on the admission made by the petitioners herein that they have no objection for impleading all the daughters of the deceased Joghee Gowder, this Court by

judgment dated 03.09.2010 allowed the said appeal and remanded the matter to the first appellant Court with a direction to dispose of the appeal on merits and in accordance with law. Thereafter, the 1st respondent herein filed I.A.No.303 of 2011 in A.S.No.8 of 2004 before the lower appellate Court seeking to implead the respondents 5 to 8 as parties to the suit since they are also legal heirs of the deceased Jyothi Gowder. The said IA has been allowed by the impugned order passed by the lower appellate Court. Therefore, as rightly pointed out by the learned counsel appearing for the respondents 1 to 3, the petitioners cannot re-agitate the matter in the present civil revision petition.

7. Further, in the decision reported in 2015(4) CTC page 293 (Devaki Thiagarajan vs Ahamed and others), wherein it has been held as follows:-

65. In this decision, the Division Bench of the Apex Court has spoken through His Lordship M.Y.Eqbal, as under:

"Section 52 of the Transfer of Property Act speaks about the Doctrine of lis pendens. It is well settled that the Doctrine of lis pendens is a Doctrine based on the ground that it is necessary for the administration of justice that the decision of a Court in a Suit should be binding not only on the litigating parties but on those, who derive title pendente lite. The provision of this Section does not indeed annul the conveyance or the transfer otherwise, but renders it subservient to the rights of the parties to a litigation. "

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70. We have struck a balance between the submissions made on behalf both sides and ultimately found that as observed by the Division Bench of the Apex Court in the above cited decision, the provisions of Order 1, Rule 10(2) of C.P.C., empowers Court to add any person as a party at any stage of the proceedings.

71. As aforestated in the earlier paragraphs, the Respondents 2 to 5/Plaintiffs 1 to 4 have not alienated the Suit property in favour of the Appellant/proposed 5th Plaintiff with the permission of the Court. However, as argued by Mr.R.Thiyagarajan, since the Respondents 2 to 5/Plaintiffs 1 to 4 have allegedly sold the Suit property in favour of the Appellant/proposed 5th Plaintiff, they might not show much interest or due

diligence in conducting the trial of the Suit. Even if it is presumed that the Appellant/proposed 5th Plaintiff is not included as one of the co-Plaintiffs to prosecute the Suit as against the Respondents 6 to 9, she would definitely approach the Court of law with a new Suit, which would pave way for the multiplication of proceedings and only for the purpose of avoidance of any other litigation for the same subject matter, we have, therefore, decided that the Appellant/proposed 5th plaintiff could be allowed to be impleaded as the 5th Plaintiff.

71(a). Further, we do not see any collusiveness between the Appellant/proposed 5th Plaintiff and the Respondents 2 to 5/Plaintiffs 1 to 4. Section 52 of T.P. Act is a substantive law, whereas the provisions of Order 1, Rule 10(2) of C.P.C., is a procedural law. Even though the Respondents 2 to 5/Plaintiffs 1 to 4 have not obtained prior permission to alienate the property, which is directly and substantially in question in the present Suit, Order 1, Rule 10(2) of C.P.C., empowers this Court to implead any party at any stage of the proceedings either as Plaintiff or Defendant upon or without any Application of either party, whose presence appears to be necessary in Order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the Suit."

8. In the light of the above decision, this Court is of the opinion that the petitioners herein have not made out any case to interfere with the impugned order passed by the Court below. There is no error or illegality in the impugned order passed by the learned District Judge, Nilgiris. There is no merit in the Civil Revision Petition and the same is liable to be dismissed.

9. Therefore, the Civil Revision Petition is dismissed. Connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dpq

To

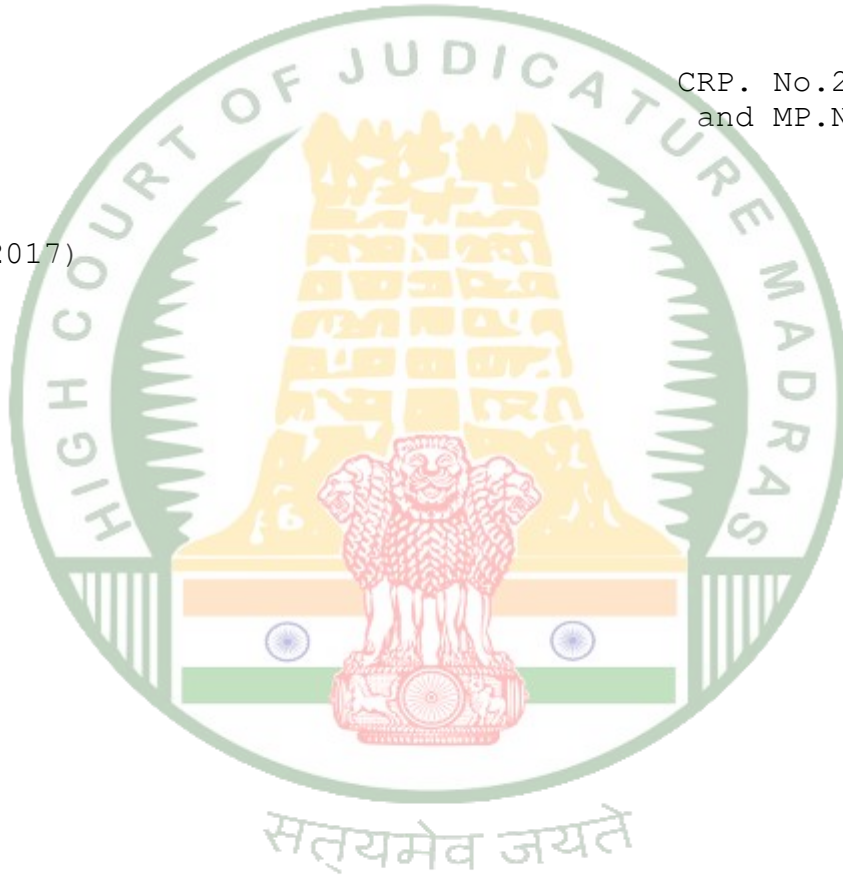
The District Judge,
Nilgiris.

+lcc to Mr.R. Subramanian, Advocate Sr. 24125

+lcc to Mr.S.K.Rakhunathan, Advocate Sr. 24159

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KS (CO)
VR(14/06/2017)



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