

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 28TH DAY OF NOVEMBER 2017

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

A. Nos.4748 and 4749 of 2017

in

O.P. No.163 of 2013

In the matter of the
Administrator - General Act,
1963 (Act of XXXV of 1963)

And

In the matter of Estate of the
Deceased K.S.Ramasamy

1.R.Sivasubramaniyan
Advocate,
S/o.Late K.S.Ramasamy,
45, 14th Main Road,
Anna Nagar, Chennai - 40

2.S.Hari Ram
S/o.R.Sivasubramaniyan,
45, 14th Main Road,
Anna Nagar, Chennai - 40

(Impleaded as 2nd petitioner of the order of this
Hon'ble Court dated 16/9/2014 passed in
Application No.5537/2014.)

3.Arulmigu Akkaraipatti Ponkaliasman,
Arulmigu Akkaraipatti Muthusamy and
Arulmigu Molipilli Annamar Swami - DEITIES
Arulmigu Varadharaja Perumal Vagaiyara
Thirukkoil Devasthanam
Hindu Religious and Charitable Endowments Board (HR &CE),
Vengumbur Village, Erode T.K.
Represented by the Executive Officer, R.Chandiran

4.Arulmigu Bhagavathy Amman, Deity
Kalvettupalayam Village, Vengumbur Post, Unjalur Via,
Erode Dt., Represented by Devotee
Mrs.S.Ramalakshmi

(Impleaded as 3rd and 4th petitioners
as per order dated 28/11/2017 in
Application Nos.4749/2017 & 4748/2017)

.. Petitioners

Vs.

- 1.R.Periasamy,
S/o.Late K.S.Ramasamy
Main Street, Kalvettupalayam,
Vengumbur Post,
Unjalur Via,
Erode T.K.
- 2.G.Guhan,
S/o.Late Dr.Ganapathy Subramanian
324, SidharthNatura, 40, Vadakkupattu Main Road,
Medavakkam, Chennai - 600 100.
- 3.Mrs.HemalathaMuthukumar,
W/o.V.Muthukumar,
56, Ramanujam Nagar,
Karur - 2.
- 4.Mrs.Karupyammal
W/o.Late K.S.Ramasamy
27A, Main Street, Kalvettupalayam,
Vengumbur Post,
Unjalur Via,
Erode T.K.
- 5.Canara Bank,
Thamaraipalayam Branch,
Karur - Erode Road,
Thamaripalayam, Erode TK,
Rep. By its Manager
- 6.State Bank of India,
Kodumudi Branch,
Erode T.K.
Rep. By its Manager
- 7.District Collector,
Erode Periyar District,
Office of the District Collector,
Erode - 1.
- 8.The District Superintendent of Police,
Erode Periyar District,
Office of the District Superintendent of Police,
Erode - 1.

.. Respondents

A. No.4748 of 2017

Arulmigu Bhagavathy Amman, Deity
Kalvettupalayam Village, Vengumbur Post, Unjalur Via,
Erode Dt., Represented by Devotee Mrs.S.Ramalakshmi
.. Applicant / Proposed 4th petitioner

Vs.

1.R.Periasamy,
S/o.Late K.S.Ramasamy
Main Street, Kalvettupalayam,
Vengumbur Post,
Unjalur Via,
Erode T.K.

2.G.Guhan,
S/o.Late Dr.Ganapathy Subramanian
324, SidharthNatura, 40, Vadakkupattu Main Road,
Medavakkam, Chennai - 600 100.

3.Mrs.HemalathaMuthukumar,
W/o.V.Muthukumar,
56, Ramanujam Nagar,
Karur - 2.

.. Respondents / Respondents

4.Mrs.Karupyammal
W/o.Late K.S.Ramasamy
27A, Main Street, Kalvettupalayam,
Vengumbur Post,
Unjalur Via,
Erode T.K.

(Expired on 12-11-2013 & now represented by 1st to 3rd
Respondents in their capacity as her L.R.s & the 1st
Petitioner is also L.R.)

5.Canara Bank,
Thamaraipalayam Branch,
Karur - Erode Road,
Thamaripalayam, Erode TK,
Rep. By its Manager

6.State Bank of India,
Kodumudi Branch,
Erode T.K.
Rep. By its Manager

7.District Collector,
Erode Periyar District,
Office of the District Collector,
Erode - 1.

8.The District Superintendent of Police,
Erode Periyar District,
Office of the District Superintendent of Police,
Erode - 1.

.. Respondents / Respondents

9.R.Sivasubramaniyan
Advocate,
S/o.Late K.S.Ramasamy,

45, 14th Main Road,
Anna Nagar, Chennai - 40

.. Respondent / 1st petitioner

2.S.Hari Ram
S/o.R.Sivasubramaniyan,
45, 14th Main Road,
Anna Nagar, Chennai - 40

.. Respondent / 2nd petitioner

A. No.4749 of 2017

Arulmigu Akkaraipatti Ponkalamman,
Arulmigu Akkaraipatti Muthusamy and
Arulmigu Molipilli Annamar Swami - DEITIES
Arulmigu Varadharaja Perumal Vagaiyara
Thirukkcoil Devasthanam
Hindu Religious and Charitable Endowments Board (HR & CE),
Vengumbur Village, Erode T.K.
Represented by the Executive Officer, R.Chandiran
.. Applicant / Proposed 3rd petitioner

Vs.

1.R.Periasamy,
S/o.Late K.S.Ramasamy
Main Street, Kalvettupalayam,
Vengumbur Post,
Unjalur Via,
Erode T.K.

2.G.Guhan,
S/o.Late Dr.Ganapathy Subramanian
324, SidharthNatura, 40, Vadakkupattu Main Road,
Medavakkam, Chennai - 600 100.

3.Mrs.HemalathaMuthukumar,
W/o.V.Muthukumar,
56, Ramanujam Nagar,
Karur - 2.

.. Respondents / Respondents

4.Mrs.Karupyammal
W/o.Late K.S.Ramasamy
27A, Main Street, Kalvettupalayam,
Vengumbur Post,
Unjalur Via, Erode T.K.

(Expired on 12-11-2013 & now represented by 1st to 3rd
Respondents in their capacity as her L.R.s & the 1st
Petitioner is also L.R.)

5.Canara Bank,
Thamaraipalayam Branch,
Karur - Erode Road,
Thamaripalayam, Erode TK,
Rep. By its Manager

6.State Bank of India,
Kodumudi Branch,
Erode T.K.
Rep. By its Manager

7.District Collector,
Erode Periyar District,
Office of the District Collector,
Erode - 1.

8.The District Superintendent of Police,
Erode Periyar District,
Office of the District Superintendent of Police,
Erode - 1.

.. Respondents / Respondents

9.R.Sivasubramaniyan
Advocate,
S/o.Late K.S.Ramasamy,
45, 14th Main Road,
Anna Nagar, Chennai - 40

.. Respondent / 1st petitioner

2.S.Hari Ram
S/o.R.Sivasubramaniyan,
45, 14th Main Road,
Anna Nagar, Chennai - 40

.. Respondent / 2nd petitioner

A. No.4748 of 2017

Application praying that this Hon'ble Court be pleased to pass an order impleading this Applicant as 4th petitioner in the present O.P. No.163 of 2013.

A. No.4749 of 2017

Application praying that this Hon'ble Court be pleased to pass an order impleading this Applicant as 3rd petitioner in the present O.P. No.163 of 2013.

These Applications coming on this day before this court for hearing the court made the following order:

OP.No.163 of 2013 has been filed under Section 10 of the Administrator General Act, 1963 and Order 25 Rule 5 of Original Side Rules of the Madras High Court, seeking a direction against the Administrator General of Tamil Nadu to collect and take possession of the assets of the estate of late K.S.Ramasamy and to hold, deposit, realise, sell

or invest the same according to the provisions of the said Act. A further direction was also sought under Section 10 (2) of the said Act to file and prosecute suits or take such proceedings as may be deemed appropriate for recovery of any assets, bank deposits, money, movable or immovable of the estate of deceased.

2. The above OP had been filed by two Petitioners, namely, R.Sivasubramaniyan, who is an Advocate and son of late K.S.Ramasamy and S.Hariram, son of the 1st Petitioner, R.Sivasubramaniyan. The 1st Respondent in the OP is R.Periasamy, another son of K.S.Ramasamy and brother of the 1st Petitioner. The 2nd and 3rd Respondents, G.Guhan and Hemalatha Muthukumar are son and daughter of the predeceased sister of the 1st Petitioner. The 4th Respondent, Karupayee ammala is the wife of late K.S.Ramasamy. Above description reveals that the Petitioners and the 1 to 4th Respondents are all members of one single family. They are agitating the issue in relation to the estate of K.S.Ramasamy. The 5th and 6th Respondents are Canara Bank and State Bank of India at Erode. The 7th Respondent is the District Collector, Erode and the 8th Respondent is the District Superintendent of Police, Erode.

3. The OP is being heard and trial on the contentious issues is under way. Consequently, it would not be appropriate on the part of this court to examine the merits and demerits of the rival contentions. However, as a fact, it must also be mentioned that the 1st Respondent,

R.Periasamy had also filed OS.No.156 of 2014, which is now pending in the I Additional District Court at Erode.

4. The said suit had been filed, seeking partition and separate possession of the properties of late K.S.Ramasamy. In the said suit, the 1st Petitioner in the present OP, R.Sivasubramanian was shown as the 1st Defendant. The 2nd and 3rd Respondents in the OP, G.Guhan and M.Hemalatha were shown as the 2nd 3rd Defendants. The Plaintiff therein had not impleaded his mother Karupayee Ammal, who is shown as the 4th Respondent in the OP as a party Defendant in the said suit. However, he had impleaded, Arulmigu Bhahavathiyamman, Deity represented by Dharmakartha K.S.Shanmugam, as the 4th Defendant and Arumigu Akkaraipatti Ponkaliasman, Arulmigu Akkaraipatti Muthusamy and Arulmigu Molipili Annamar Swami Deities, Arulmigu Varadharaja Perumal Vagaiyara Thirukoil Devasthanam, represented by the Executive Officer, as the 5th Defendant.

5. In the plaint averments, in paragraph 11, the Plaintiff therein, who is the 1st Respondent herein, had stated the reasons as to why he had impleaded the above mentioned 4th and 5th Defendants, as follows:-

"11. The Plaintiff states that when the Plaintiff started insisting the 1st Defendant to started to encumber the properties. The 1st Defendant executed two gift statement deeds dated 15.4.2014 in the name of the 4th Defendant deity with respect to land in RS.No.267/1 to 5,

295/14 etc., and the ancestral house in RS.No.295/14. On the same day another settlement deed in favour of the 5th Defendant was executed by him in respect of the lands in RS.No.267/1 to 5 and the house property in RS.No.295/14. The registration copies of the three settlement deeds are produced herewith. The aforesaid gift settlement deeds are made without any legal disposition and the shares quoted therein are contradictory. The 1st Defendant is well aware of the fact that mother Karuppayammal executed the aforesaid Will and therefore, the Plaintiff has more shares in the suit properties. Out of the jealousy and envy the 1st d started encumbering the properties without any limits. The 1st Defendant has no manner of right to encumber the properties. The alleged donee namely the Defendants 4 and 5 have not taken possession of the property. It, being third party to property the Defendants 4 and 5 cannot enjoy the properties jointly. They have to seek proper partition. The 1st Defendant openly proclaim that he will not leave single cent without any encumbrance. Hence, the 1st Defendant has to be restrained by an order of injunction restraining him from alienating or encumbering the property till final partition takes place. Hence, the present suit for partition and separate possession. "

6. A.No.4748 of 2017 has been filed by Arulmigu Arulmigu Bhagavathy Amman, Deity, Kalvettupalayam Village, Vengumbur Post, Unjalur Via, Erode District, represented by Devotee, S.Ramalkshmi. As is seen from the description in

effect, the Applicant is Arulmigu Bhagavathy Amman, Deity, who is actually the 4th Defendant in OS.No.156 of 2014. It cannot be disputed that the Deity can also be represented by a Devotee.

7. A.No.4749 of 2017 has been filed by Arumigu Akkaraipatti Ponkaliasamman, Arulmigu Akkaraipatti Muthusamy and Arulmigu Molipili Annamar Swami Deities Arulmigu Varadharaja Perumal Vagaiyara Thirukoil Devasthanam represented by the Executive Officer. As is seen from the description, the Applicant is the 5th Defendant in OS.No.156 of 2014. The reasons given by the Applicant in A.No.4748 of 2017 to be impleaded as the 4th Petitioner in the OP is substantially the same, which the 1st Respondent in the OP/ Plaintiff in OS.No.156 of 2014 had given for impleading the present Applicant as the 4th Defendant in the said suit. The reasons given by the Applicant in A.No.4749 of 2017 to be impleaded as the 3rd Petitioner in the OP is again substantially the same to the reasons given by the 1st Respondent in the present OP/ the Plaintiff in OS.No.156 of 2014 for impleading the Applicant herein as the 5th Defendant in the said suit.

8. The substantial reasons are that the Petitioner in the OP/1st Defendant in the suit had executed two gift settlement deeds dated 15.4.2014 in favour of the Applicant in A.No.4748 of 2017 with respect to the properties in RS.No.267/1 to 5, 295/4, etc. and the ancestral house in RS.No.295/14. The Petitioner in the OP/1st Defendant in

the suit had executed another settlement deed in favour of the Applicant in A.No.4749 of 2017 with respect to the lands in RS.No.267/1 to 5 and the house property in RS.NO.295/14. All the three documents have also been registered.

9. It is common knowledge that a settlement deed takes effect from the date of the settlement. Truth and veracity of the settlement deed have to be agitated at the time of trial. But, prima facie, the settlees get a right to at least participate in the proceedings as proper parties. Even in the plaint, in the very same paragraph, which had been extracted above, the 1st Respondent in the OP/the Plaintiff in the suit, had stated that the Applicant in A.No.4748 of 2017 and the Applicant in A.NO.4749 of 2017, who are the 4th and 5th Defendants, have to seek proper partition to exercise their rights as settlees under the settlement deeds. But, however, he had impleaded them as the Defendants in the said suit since they were proper parties.

10. The above narration is being stated since the 1st Respondent had raised serious objections for grant of any relief in the present applications. Arguments were advanced that under the provisions of the Administrators General Act, 1963, particularly, Section 10, impleading cannot be done. Judgements have been referred to hold that the present applications have to be dismissed.

11. As stated above, the trial is under way in the OP. Even if any observation is given with respect to the rights of the present Applicants, it may have a bearing while adjudicating the final issues in the OP. Consequently, even though in the counter, various issues have been raised with all parties raising allegations against one another, on the very short ground that the Applicants are both necessary and proper parties, since they have rightly or wrongly been bestowed with valuable properties which are the subject matter in the OP, I hold that they must be impleaded as Petitioners in the OP to participate in the proceedings. They are directly interested in the estate of K.S.Ramasamy, since by virtue of the settlement deeds referred to above, they are the beneficiaries to the estate, which is actually being agitated by this court. They have to be heard. They do not have any adverse interest as against the family of K.S.Ramasamy, but as Deities and Temples in the locality where the properties are situated and since the properties have been bestowed to them, they have to be heard. If the properties which have been bestowed had been encroachment by third parties, again they must come forward to put forth their representations before this court.

12. As pointed out at the earliest instance, the Petitioner under Section 10 of the Administrators General Act, 1963 also includes necessity of this court to examine recovery of property. Therefore, all stake holders will

have to be heard by the court. It is significant to point out that these Applicants seek to implead themselves as Petitioners, which naturally means that they seek to implead themselves with a view to assist the court to protect the properties of K.S.Ramasamy. There is no adverse interest in them as against the estate of K.S.Ramasamy. The objections being raised mere as a formality have to be brushed aside. The 1st Respondent cannot take a different stand in the present OP from the stand he has taken in the suit, which he had himself filed and in which he had himself impleaded the present Applicants as the Defendants. He has himself realised that they are proper and necessary parties.

13. It must be kept in mind that mis joinder of necessary parties may not be fatal, but non joinder of parties will be fatal to any proceedings. Consequently, the present Applicants have a direct interest in the estate of K.S.Ramasamy and they have sufficient locus-standi to be heard by this court.

14. On all these grounds and again reiterating that very consiciously, I am not going into the precedents cited since I would have to examine the merits of the OP and also the merits of the suit and also the merits of the settlement deeds, which exercise would be highly inappropriate at this stage of the proceedings, I hold that the applications have to be allowed.

15. In the result, A.Nos.4748 and 4749 of 2017 are allowed. The Petitioner is directed to carry out necessary amendments in the OP and file a copy of the amended petition by 8.12.2017.

Sd./- C.V.K.J.

28.11.2017

//Certified to be true copy//

Dated at Madras this the th day of 2018.

COURT OFFICER (O.S.)

TPY/5.1.2018

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