

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2017

CORAM

THE HON'BLE Ms.JUSTICE V.M.VELUMANI

C.R.P.(NPD) No.2885 of 2010
and M.P.No.1 of 2010

Maha Vishnu

.. Petitioner

Vs

1.Kailasam

2.Muthulakshmi

3.State of Tamilnadu rep. By its
District Collector, Erode District.

4.The District Revenue Officer,
Gobichettipalayam.

5.The Tahsildar,
Bhavani Taluk,
Erode District.

6.The Revenue Inspector,
Anthiyur, Bhavani Taluk,
Erode District.

7.The Village Administrative Officer,
Anthiyur Village, Bhavani Taluk,
Erode District.

8.Selvaraj

9.Sekar

.. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 14.07.2010 made in I.A.No.53 of 2009 in A.S.No.46 of 2006 on the file of the Sub Court, Bhavani.

For Petitioner : Mr.N.Manoharan
 For R1 : No Appearance
 For R2, R8, R9 : M/s.P.Savitha for M/s.V.Rajesh
 For R3, R6, R7 : Mr.M.Venugopal, Spl. GP

ORDER

This Civil Revision Petition has been filed to set aside the order dated 14.07.2010 made in I.A.No.53 of 2009 in A.S.No.46 of 2006 on the file of the Sub Court, Bhavani.

2. The petitioner S/o.Kailasam, the first respondent herein/second appellant in the first appeal is the third party to first appeal in A.S.No.49 of 2006 on the file of Sub Court, Bhavani. One Rajammal filed the suit in O.S.No.359 of 2005 on the file of Principal District Munsif, Bhavani, for declaration and injunction. The said suit was dismissed by the Judgment and Decree dated 15.06.2006.

Challenging the same, the said Rajammal filed an Appeal in A.S.No.49 of 2006. Pending first appeal, the said Rajammal died on 01.10.2007. The respondents 1 and 2 and respondents 8 and 9 were impleaded as appellants 2 & 3 and respondents 6 & 7 in the first appeal in A.S.No.49 of 2006 as legal heirs of deceased Rajammal vide order dated 13.11.2008 made in I.A.No.132 of 2008. The petitioner filed the present I.A.No.53 of 2009 under Order I Rule 10(2) and Section 151 of CPC for impleading himself as fourth appellant in the first appeal.

3. According to the petitioner, the said Rajammal by a Will bequeathed suit property to the petitioner and he has become owner of the suit property. In view of the same, he is necessary and proper party to the suit and prayed for allowing the application.

4. The third respondent filed counter affidavit and the same was adopted by respondents 1, 2, 4 and 5 and opposed the said application. They contended that the petitioner has not furnished any particulars of the Will. The deceased Rajammal had not executed any Will. The petitioner kept quiet for two years from the date of death of the deceased Rajammal and filed the present application by creating the Will. Only when the petitioner proves the genuineness of the Will in

Competent Court, he can be impleaded and prayed for dismissal of the application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials on record and the facts, dismissed the application holding that petitioner has approached the Court after two years of death of Rajammal to be impleaded as fourth appellant based on the alleged Will which creates suspicion and the petitioner has not proved the genuineness of the Will before Competent Court, the petitioner is not a necessary party.

6. Against the said order of dismissal dated 14.07.2010 made in I.A.No.53 of 2009 in A.S.No.49 of 2006, the present Civil Revision Petition is filed by the petitioner.

7. The learned counsel appearing for the petitioner re-iterated the averments in the affidavit and contentions raised in the grounds and submitted that the deceased Rajammal executed a Will bequeathing the suit property to the petitioner. Therefore, he has become owner of the property and he is necessary and proper party to

the first appeal. In support of his contention, the learned counsel appearing for the petitioner relied on the following Judgments:

1. [(2010)2 Supreme Court Cases 162] Suresh Kumar Banasal -vs- Krishna Bansal and another.

"17. That apart, since the question of genuineness of the will cannot be conclusively gone into by the Court in a proceeding for substitution in a pending eviction suit and in view of the fact that an application was made at the instance of the appellant for impleadment as a legal representative of the deceased on the basis of the will which is yet to be probated, in our view, the best course open to the Court is to allow impleadment of the appellant in the eviction proceeding, thereby permitting him to proceed with the eviction suit along with natural heirs and legal representatives of the deceased plaintiff, but in case the decree is to be passed for eviction of the tenant from the suit premises such eviction decree shall be subject to the grant of probate of the will alleged to have been executed by the deceased plaintiff.

18. At the same time, it is clear that in case the will of the deceased plaintiff is found

not to be genuine and probate is not granted, the Court shall proceed to grant the eviction decree in favour of Respondent 1 and not in favour of the appellant. It is well settled that in the event, the will is found to be genuine and probate is granted, only the appellant would be entitled to get an order of eviction of the respondent tenants from the suit premises excluding the claim of the natural heirs and legal representatives of the deceased plaintiff.

21. In order to shorten the litigation and to consider the rival claims of the parties, in our view, the proper course to follow is to bring all the heirs and legal representatives who are claiming on the basis of the will of the deceased plaintiff so that all the legal representatives, namely, the appellant and the natural heirs and legal representatives of the deceased plaintiff can represent the estate of the deceased for the ultimate benefit of the real legal representatives. If this process is followed, this would also avoid delay in disposal of the suit.

23. Before parting with this judgment, it is necessary to consider the decision of this Court in Jaladi Suguna v. Satya Sai Central

Trust cited by the learned Senior Counsel for the appellant. In Jaladi Suguna this Court held that the intestate heir (husband) and the testamentary legatees (nieces and nephews), seeking impleadment as the heirs of the deceased respondent in an appeal have to be brought on record before the Court can proceed further in the appeal. Furthermore, in that decision it was also held that a legatee under a will, who intends to represent the estate of the deceased testator, being an intermeddler with the estate of the deceased testator, will be a legal representative.

24. In view of the aforesaid discussions and in view of the decision in Jaladi Suguna, we are also of the view that in an eviction proceeding, when a legatee under a will intends to represent the interest of the estate of the deceased testator, he will be a legal representative within the meaning of Section 2(11) of the Code of Civil Procedure, for which it is not necessary in an eviction suit to decide whether the will on the basis of which substitution is sought for, is a suspicious one or that the parties must send the case back to the Probate Court for a decision whether the will was genuine or not."

2. [(2008)8 Supreme Court Cases 521] Jaladi Suguna (Deceased) Through Lrs. -vs- Satya Sai Central Trust and others.

"12.'Legal representative' according to its definition in Section 2(11) CPC, means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased. Thus a legatee under a will, who intends to represent the estate of the deceased testator, being an intermeddler with the estate of the deceased, will be a legal representative.

16.The provisions of Rules 4 and 5 of Order 22 are mandatory. When a respondent in an appeal dies, the court cannot simply say that it will hear all rival claimants to the estate of the deceased respondent and proceed to dispose of the appeal. Nor can it implead all persons claiming to be legal representatives, as parties to the appeal without deciding who will represent the estate of the deceased, and proceed to hear the appeal on merits. The court cannot also postpone the decision as to who is the legal representative of the deceased respondent,

for being decided along with the appeal on merits. The Code clearly provides that where a question arises as to whether any person is or is not the legal representative of a deceased respondent, such question shall be determined by the Court. The Code also provides that where one of the respondents dies and the right to sue does not survive against the surviving respondents, the court shall, on an application made in that behalf, cause the legal representatives of the deceased respondent to be made parties, and then proceed with the case. Though Rule 5 does not specifically provide that determination of legal representative should precede the hearing of the appeal on merits, Rule 4 read with Rule 11 makes it clear that the appeal can be heard only after the legal representatives are brought on record."

**3.[CDJ 2014 MHC 4219] Lakshmi Narayanan @
Hari -vs- Thulasimani & Others.**

"12. Legal representative according to its definition in Section 2(11) CPC, means a person who in law represents the estate of a deceased person, and includes any person

who intermeddles with the estate of the deceased. Thus a legatee under a will, who intends to represent the estate of the deceased testator, being an intermeddler with the estate of the deceased, will be a legal representative.”

8. The learned Special Government Pleader appearing for the respondents 3, 6 and 7 submitted that the suit property is a poramboke land, the deceased Rajammal is not the owner of the property and she filed the suit based on the patta issued in her favour. Subsequently, the patta was cancelled in the year 2005 and the deceased Rajammal has not initiated any further proceedings against the cancellation of patta. The deceased Rajammal herself has no right or title or interest in the suit property. In the circumstances, the claim of the petitioner is not maintainable and the petitioner is not necessary and proper party to the suit.

9. Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the Respondents 2, 3, 6 to 9 and perused the materials available on record.

10. From the materials on record, it is seen that the sole appellant Rajammal died on 01.10.2007 and her legal heirs were impleaded as appellants 2 & 3 and respondents 6 & 7 in the first appeal in A.S.No.49 of 2006, as per the order dated 13.11.2008 made in I.A.No.132 of 2008. The petitioner filed application in I.A.No.53 of 2009 for impleading himself as fourth appellant, but he did not furnish the date of the Will and he has not stated as to whether the same is registered or not. The petitioner has not taken any steps immediately after the death of the first appellant/deceased Rajammal to get himself to implead in the appeal. Only after two years from the date of death of the Rajammal, the petitioner has come up with the present application for impleading himself as fourth appellant in the appeal. The petitioner has not explained the delay in filing the application. The petitioner is the son of first respondent who is second appellant. The first respondent was brought on record as legal heir of deceased first appellant.

11. The second respondent has filed counter and is disputing the Will. According to the second respondent, the petitioner has created the Will.

12. In view of the dispute with regard to the genuineness of the Will, it is for the petitioner to prove the genuineness of the Will in the Competent Court and then only, he will acquire the right under the Will. Further the petitioner has approached after two years of death of Rajammal and after the legal heirs of Rajammal are brought on record. This delay on the part of the petitioner in approaching the Court creates suspicion with regard to the genuineness of the Will alleged to have been executed by Rajammal. The legal heirs of deceased Rajammal are already on record. In view of the same the Judgment reported in 2010(2) SCC 162 does not advance the case of the petitioner. The learned Judge has considered the contention of the petitioner that he is the owner of the property as per the Will and rejected the same thereby determining the question of legal representative. In view of the order passed by the Learned Judge determining the question of legal representative, the Judgment relied on by the learned counsel for the petitioner does not advance the case of the petitioner.

13. The learned Judge has considered all the aspects in proper perspective and dismissed the application by giving cogent and valid

reasons. There is no illegality or irregularity warranting interference by this Court with the order of the learned Trial Judge dated 14.07.2010.

14. In the result, the Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is also closed. No costs.

09.11.2017

Index : Yes/No
Speaking/Non Speaking
rna

To

- 1.The Subordinate Judge,
Bhavani.
- 2.State of Tamilnadu rep. By its
District Collector, Erode District.
- 3.The District Revenue Officer,
Gobichettipalayam.

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V.M.VELUMANI,J

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