

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD) Nos.2772 and 2773 of 2016
& C.M.P.Nos.7695 and 7697 of 2017

Manian

.. Petitioner in
both CRPs.

Vs.

1. M.Sengodan
2. S.Shanmugam

.. Respondents in
both CRPs.

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 29.04.2016 made in I.A.No.1426 of 2014 in I.A.No.1104 of 2013 in O.S.No.356 of 2013 and I.A.No.1427 of 2014 in O.S.No.356 of 2013 respectively, on the file of the District Munsif Court, Attur.

For Petitioner : Ms.Zeenath Begum

For Respondents : Mr.K.Chandru

COMMON ORDER

The Civil Revision Petitions have been filed against the fair and decreetal order dated 29.04.2016 made in I.A.Nos.1426 and

1427 of 2014 respectively in I.A.No.1104 of 2013 in O.S.No.356 of 2013 on the file of the District Munsif Court, Attur.

2. Both the civil revision petitions are filed against the common order dated 29.04.2016 and therefore, the civil revision petitions are disposed of by this common order.

3. One Sakunthala, who is the mother of the petitioner, is the plaintiff and respondents are the defendants in O.S.No.356 of 2013. The petitioner is a proposed party to the suit and in I.A.No.1104 of 2013. The petitioner's mother filed the suit for declaration to declare the sale deed dated 15.07.2013 executed by the first respondent in favour of the second respondent as null and void and for permanent injunction. Along with the suit, the original plaintiff filed I.A.No.1104 of 2013 under Order 39 and Rules 1 and 2 of C.P.C for injunction pending suit. The said original plaintiff died pending suit. The petitioner filed I.A.No.1426 of 2014 in I.A.No.1104 of 2013 in O.S.No.356 of 2013 for impleading the petitioner as second petitioner in I.A.No.1104 of 2013 and filed I.A.No.1427 of 2014 in O.S.No.356 of 2013 to implead him as second plaintiff in O.S.No.356 of 2013.

4. According to the petitioner, his mother, the original plaintiff by registered Will dated 22.02.2007 bequeathed the property to him. His brothers and sisters do not have any right in the suit property and he is the only person, who has right, interest and title in the suit property.

5. The respondents 1 and 2 filed counter affidavits opposing the said applications and submitted that the petitioner is one of the legal heirs of the deceased/original plaintiff. All the legal heirs have to be impleaded. The original plaintiff did not mention anything about the Will dated 22.02.2007 in the averments made in the plaint as well as in the application filed for injunction. The genuineness of the Will has to be proved by the petitioner.

6. The learned Judge considering the averments made in the affidavits, counter affidavits and materials available on record, allowed the applications holding that the petitioner is a necessary party to the suit and also held that the genuineness of the Will has to be proved in the suit and in view of the same, other legal heirs have to be impleaded.

7. Challenging the portion of the impugned order dated 29.04.2016 made in I.A.Nos.1426 and 1427 of 2014, the petitioner has come out with the present revision petitions.

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

9. The contention of the learned counsel for the petitioner is that as per the Will dated 22.02.2007, the petitioner is the only person having title in respect of the suit property. His elder brother has filed proof affidavit in I.A.Nos.1426 and 1427 of 2014 and he was examined. He was cross examined by the respondents 1 and 2. He admitted that their mother executed the Will in favour of the petitioner and other legal heirs are not claiming any right over the suit property. If they claim any right, it is for them to take steps to implead them in the suit. Any one of the legal heirs of the deceased can represent the estate of the deceased.

10. Per contra, the learned counsel for the respondents submitted that the petitioner's mother did not mention anything

about the Will in the averments made in the plaint and genuineness of the Will has to be proved. In these circumstances, all the legal heirs of the deceased are the necessary parties and the petitioner alone cannot represent the deceased plaintiff.

11. The issue to be decided in the civil revision petitions is as to whether the petitioner alone is necessary and proper party to the suit or all the legal heirs are necessary and proper parties to the suit.

12. According to the petitioner, as per the registered Will dated 22.02.2007, the petitioner is the sole beneficiary and other legal heirs have no right or interest in the suit property.

13. According to the respondents, the original plaintiff has not mentioned about the Will in the plaint. The genuineness of the Will is in doubt. Except elder brother of the petitioner, other legal heirs have not entered appearance and not given any consent for the petitioner to represent the deceased plaintiff.

14. The suit is for declaration that the sale deed dated

15.07.2013 executed by the first respondent to the second respondent as null and void. In view of the nature of the relief sought for in the suit, the Will dated 22.02.2007 executed by the mother of the petitioner/original plaintiff is not a relevant fact to be mentioned in the plaint. The Will is the registered one and it is for the petitioner to prove the same during trial, even otherwise, it is well settled that any one of the legal heirs of the deceased can represent the estate of the deceased. Failure to make all the legal heirs of the deceased as parties to the suit is not fatal to the case. As per Section 2(11) of C.P.C., the legal representative is a person, who in law represents the estate of the deceased person. As per this definition, the petitioner is the legal representative of the deceased plaintiff, who can represent the estate of the deceased/original plaintiff.

15. The learned Judge failed to consider that any one of the legal heirs of the deceased can represent the estate of the deceased and having taken note of the contention of the petitioner, he is the only beneficiary of the deceased plaintiff under the Will dated 22.02.2007. The learned Judge erred in directing the petitioner to implead all the legal heirs of the deceased as parties

to the suit.

16. In view of the above, portion of the order passed in I.A.Nos. 1426 and 1427 of 2014 directing the petitioner to implead all the legal heirs of the deceased plaintiff is set aside.

17. In the result, the civil revision petitions are allowed by setting aside the portion of the impugned order dated 29.04.2016 made in I.A.Nos.1426 and 1427 of 2014. No costs. Consequently, connected Miscellaneous Petitions are closed.

13.06.2017

Index : Yes

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To

District Munsif Court, Attur.

V.M.VELUMANI, J.

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