

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3473 of 2010
and
M.P.No.1 of 2010

N.Rajamanickam

.. Petitioner

Vs.

1. Mrs.Devagi
2. Mrs.Bhuvaneswari
3. Mrs.Rukmani
4. Perumalsamy
5. Mrs.Gomathi
6. Mrs.Santhi
7. N.Marimuthu
8. Mrs.Baby

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 15.08.2010 made in I.A.No.335 of 2009 in O.S.No.716 of 2008 on the file of the III Additional Subordinate Court, Coimbatore.

For Petitioner : Mr.C.Deivasigamani

For R1 to R5 : Mr.NA.Anand Venkatesh

For R6 to R8 : No Appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 15.08.2010 made in I.A.No.335 of 2009 in O.S.No.716 of 2008 on the file of the III Additional Subordinate Court, Coimbatore.

2. The petitioner is the first plaintiff, the respondents 1 to 6 are defendants and the 7th and 8th respondents are the 2nd and 3rd plaintiffs in O.S.No.716 of 2008 on the file of the III Additional Subordinate Court, Coimbatore. The petitioner along with the respondents 7 and 8 filed the above suit for partition against the respondents 1 to 6. According to the petitioner and respondents 7 & 8, the suit property belongs to their mother Mrs.Ramathal, after her death, they are entitled to get 3 /4th share in the suit property. The first respondent filed written statement on 22.12.2008 and is contesting the suit. The petitioner and the respondents 7 and 8 filed reply statement on 01.06.2009.

3. The petitioner and respondents 7 & 8 filed I.A.No.335 of 2009 for amendment of the plaint to include the prayer for

declaration to declare the decree dated 20.08.1998 made in O.S.No.261 of 1997 as null and void. They came to know about the said decree only from the written statement filed by the first respondent and they are not parties to the said suit and prayer for declaration to declare the said suit as null and void is necessary to decide the issue in the suit.

4. The first respondent filed counter affidavit and denied the averments made in the said application and submitted that the present suit is hit by the principles of resjudicata. The petitioner and respondents 7 & 8 are claiming their right in the suit property as per the Will dated 22.01.1991 alleged to be executed by one Velathal. She died on 07.03.2006. The suit filed by the husband of the first respondent in O.S.No.261 of 1997 was decreed on 20.08.1998. Though it was an exparte decree, the said Velathal did not object the same for about eight years. The petitioner and respondents 7 and 8 and their previous owner also knew the above said decree and they also did not object the same for the past 11 years.

5. The learned Judge considering the averments made in the

affidavit, counter affidavit and materials on record, dismissed the application on the ground that the original owner and beneficiary did not challenge the decree in O.S.No.261 of 1997 during their life time. The learned Judge also held that by amendment, the petitioner and the respondents 7 and 8 are introducing a new cause of action and if amendment is allowed, it will change the character of the suit.

6. Against the order of dismissal dated 15.08.2010 made in I.A.No.335 of 2009, the present civil revision petition is filed by the petitioner/first plaintiff.

7. Heard the learned counsel for the petitioner as well as the respondents 1 to 5 and perused the materials available on record.

8. From the materials on record, it is seen that the petitioner is seeking partition of suit property on the ground that the suit property was bequeathed to his mother and the said Will came into force after the death of the testatrix and was acted upon.

9. On the other hand, the first respondent contended that the

suit is hit by the principles of resjudicata. In O.S.No.261 of 1997 filed by one Subramani, it was decided that the suit property belongs absolutely to Subramani. Even though, it was an exparte decree, the testatrix did not challenge the same during her life time. By seeking declaration by way of amendment in the suit for partition, the petitioner is seeking to change the character of the suit as well as introducing a new cause of action.

10. The learned Judge considering all the above facts in proper perspective and dismissed the application by giving cogent and valid reasons. There is no irregularity or illegality in the order of the learned trial Judge dated 15.08.2010 warranting interference by this Court.

11. In the result, the Civil Revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. .

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Index : Yes/No

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V.M.VELUMANI, J.

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To

The III Additional Subordinate Judge,
Coimbatore



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