



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
( Civil Appellate Jurisdiction )

Monday, the Nineteenth day of June Two Thousand Seventeen

PRESENT

**The Hon`ble Mr.Justice C.V.KARTHIKEYAN**

CMP(MD) No.3408 of 2017

IN

AS No.411 of 2002

V.MADHAVAN,

... PETITIONER/APELLANT

Vs

1 V.VARADHA KRISHNA IYENGAR,

...1ST RESPONDENT/RESPONDENT

2 R.CHELLAMMAL

... 2ND RESPONDENT/3RD PARTY

(R2 IS IMPEADED AS 2ND

RESPONDENT, VIDE COURT ORDER

DATED 19.6.2017, MADE IN

CMP(MD)NO.3408/2017 IN AS.NO.411/2002

BY CVKJ)

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to implead the 2nd respondent herein as 2nd defendant in the appeal in A.S.No.411/2002 and thus render justice.

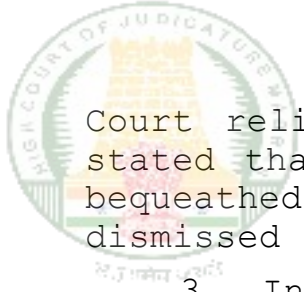
PRAYER IN AS.NO.411 OF 2002 :

Appeal Suit is filed Under Order 41 Rule 1 & 2 and Section 96 of CPC., praying to allow the first appeal setting aside the decree and judgment passed in O.S.No.135/1992 on the file of the Principal Subordinate Judge, Thirunelveli dated 24.08.2001.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.H.ARUMUGAM, Advocate for the petitioner and of MR.C.RAMESH, Advocate for the Respondent No.1 and MR.S.SATHEESH KUMAR, Advocate for the Respondent No.2 the court made the following order:-

This application is filed to implead the proposed Respondent as the 2<sup>nd</sup> Respondent in the appeal.

2. The appeal arises from the judgement and decree made in O.S.No.135 of 1992 on the file of the Principal Subordinate Judge, Tirunelveli, dated 24.8.2001. The said suit was filed for partition. The Plaintiff was V.Madhavan and the Defendant was his brother V.Varadha Krishna Iyengar. During the trial, the Trial



Court relied on the Will, marked as Ex.D11 dated 1.1.1948 and stated that the property could not be partitioned and had been bequeathed in entirety to the Defendant and consequently, dismissed the suit.

3. In the appeal, the nature of the property has been disputed whether it is ancestral and whether it could be bequeathed through a Will. The learned senior counsel Mr.S.Parthasarathy pointed out that the Hindu Succession Act came into force on 17.6.1956 and consequently, since the death occurred subsequent to coming into force of the Hindu Succession Act, his residual share would devolve on to all the Class I legal heirs including the widow and daughters.

4. It was stated that one of the daughters Chellammal, who is now sought to be impleaded as a party to the appeal, was alive and consequently, non joinder of Chellammal would be fatal to the case of the Appellant, who was the Plaintiff in the suit. It has to be mentioned that this fact, which is now pleaded for the first time, was not either pleaded in the written statement or was let in as evidence by either one of the two parties, particularly, the Respondent, who was the Defendant in the suit. At any rate, taking the submission of the learned senior counsel into consideration and to avoid any issue on technicalities, the Appellant had filed the present application, which is now under consideration in CMP.No.3408 of 2017. This application has been filed as stated above to implead the said Chellammal, who is the sister of both the parties, as a party to the appeal and consequently, to the suit.

5. Inclusion of Chellammal would avoid further complications. If the property is held to be ancestral in nature, then she would get a residual share owing to the death of the father, namely, Varadha Iyengar @ Krishna Iyengar. The Respondent, who was the Defendant primarily relied on a Will to oust the Plaintiff, who is the Appellant. He did not bring to the notice of the Trial Court or this Appellate Court from 2007 till 2017 that Chellammal is a necessary party to the proceedings. The Trial Court had upheld the genuineness of the Will and as stated above, it dismissed the suit and had stated that the Respondent/Defendant is entitled to the entire property through the Will. But, before this court, in the appeal, Mr.H.Arumugam, the learned counsel for the Appellant has seriously assailed the said findings, particularly, the statement of the witnesses. It is admitted that Chellammal is a daughter of the family. In order to avoid complications, this application has been filed.

6. The 1st Respondent had filed a counter affidavit. It has to be mentioned that this application has been filed pursuant



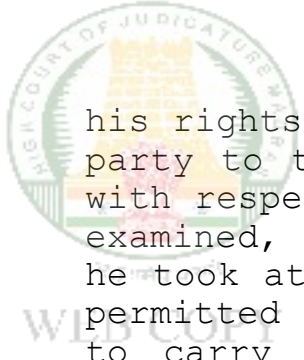
to the submissions made by the learned senior counsel, who appeared for the Respondent. Though it was argued that Chellammal as a sister is a necessary party to the suit, in writing by way of a counter affidavit, the Respondent for whom the learned senior counsel advanced arguments, had actually in his affidavit stated that the application is not maintainable and that Chellammal is not a necessary party to the suit.

7. It had also been stated that Chellammal received money from the Respondent in lieu of her share and is now trying to grab the property. Chellammal has filed a counter affidavit since notice was issued. She has stated that she has no inimical relationship with either the Appellant or the Respondent, who are both brothers. She has stated that she was informed that the property is ancestral in nature and that she has no right as a daughter in the family. However, she has stated that if the Will is held to be not valid, then she would get a share from her father.

8. A memo has been filed today. This memo has been filed by the learned counsel for the Respondent. In the said memo, the Appellant is termed as R.Chellammal which is factually wrong and misleading. In the memo, it has been stated that an opportunity must be given to file an additional written statement and to further examine witnesses.

9. With respect to examination of witnesses, it would depend on the pleadings. The pleadings cannot traverse beyond what was already been pleaded. It is made clear that examination of parties shall not include the re-examination of the witnesses to the Will, who had already been examined and re-examined and cross examined. Their evidence is already on record and their statements cannot be reopened. The evidence of DW.2 and DW.3, cannot be reopened. At the most, pleadings which are permitted can be limited to whether the property is ancestral and if it is ancestral, whether Chellammal would get a share in the property. The Defendant can restrict his written statement only to that extent. He cannot now take this opportunity to lead in evidence and fill up in the gaps in the evidence if he feels there are any. Chellammal is also permitted to file a written statement.

10. With the above observations, this application is allowed. The Registry is directed to make necessary amendment in the grounds of appeal. It is also made clear that the 1<sup>st</sup> Respondent is permitted to file an additional written statement. However, the said additional written statement shall be confined only to the rights of Chellammal and as to the manner in which



his rights if any would be affected by impleading Chellammal as a party to the proceedings. It is made very clear that pleadings, with respect to the Will or with respect to the witnesses already examined, cannot be permitted at this stage. The same stand which he took at the time of trial has to be taken. Chellammal is also permitted to file a written statement. The Registry is directed to carry out necessary amendment. Time is granted for filing additional written statement by the 1st Respondent by Chellammal till 28.6.2017. The matter is de-part heard, since fresh pleadings are being permitted to be filed.

sd/-  
19/06/2017

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)  
Madurai Bench of Madras High Court,  
Madurai - 625 023.

TO

THE PRINCIPAL SUBORDINATE JUDGE, THIRUNELVELI

+1. C.C. to M/S.H.ARUMUGAM Advocate SR.No.24742

+1cc to MR.C.RAMESH, Advocate in SR.No. 24751

GJM/CM/MSA/SAR-I-3.7.17-4P-4C

ORDER  
IN  
CMP (MD) No.3408 of 2017  
IN  
AS No.411 of 2002  
Date :19/06/2017