



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

Monday, the Twenty First day of August Two Thousand Seventeen

PRESENT

The Hon`ble Mrs Justice PUSHPA SATHYANARAYANA

CMP(MD) No.3806 of 2017
IN
SA(MD) No.899 of 2014

G.PITCHAIAH PILLAI, ... PETITIONER/PROPOSED 3rd RESPONDENT

Vs

1 SRI RAMAIAH PILLAI,
2 SRI.KANTHIAH PILLAI, ...RESPONDENTS 1 & 2/APPELLANTS 1 & 2
3 SRI SOORIYA NARAYANAN
4 SRI.ULAGANATHAN, ... RESPONDENTS 3 & 4/RESPONDENTS 1 & 2

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to implead the Petitioner as 3rd Respondent in SA(MD) No.899 of 2014 and pass such further or other orders as this Honourable Court may deem fit and proper in the nature and circumstances of the case and thus render justice.

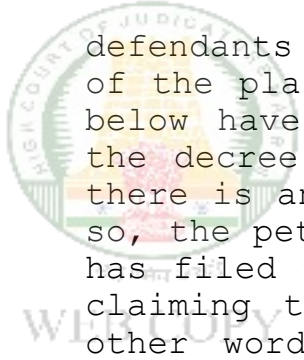
Prayer in SA(MD). 899/ 2014 :

To prefer this Memorandum of Grounds of Second Appeal against the Judgment and Decree dated 30.10.2012 passed in A.S.No.42 of 2012 on the file of the III Additional District and Sessions Court, Tirunelveli confirming the judgment and Decree dated 23.12.2011 passed in O.S.No.143 of 2008 on the file of the Principal Sub Court, Tirunelveli

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.V.SASI KUMAR, Advocate for the petitioner and of MR.D.NANNATHAMBI, Advocate for petitioner in Second Appeal, MR.G.SRIDHARAN, Advocate for R1 & R2, on behalf of the Respondents the court made the following order:-

This application is filed to implead the third respondent in S.A(MD)No.899 of 2014.

2.The suit is for specific performance filed by the plaintiffs based on an agreement alleged to have been executed by the defendants 1 and 2. The property originally said to have belonged to one Padmanabha Pillai, who had settled the same in favour of one Sornathammal. The said Sornathammal sold the property to one Esakkiammal, whose husband and son are the defendants. The



defendants entered into an agreement to sell the property in favour of the plaintiffs based on which the suit was filed and the Courts below have concurrently held that the plaintiffs are entitled for the decree. The appeal is preferred by the defendants 1 and 2 and there is an interim order of stay of execution of the decree. While so, the petitioner in C.M.P(MD)No.3806 of 2017, one Pitchaiah Pillai has filed this application to implead himself in the appeal. He is claiming to be the son of the sister-in-law of Sornathammal, in other words, he is reiterating his right and title through the female descendants of the original owner Padmanabha Pillai.

3.The said application is opposed by both the appellants and the respondents herein.

4.The present suit itself is filed based on the agreement, dated 23.06.2008 and the suit was laid on 06.08.2008.

5.It is pointed out by the learned counsel for the respondents/plaintiffs that the petitioner was aware of all the facts including the execution of the sale agreement even in the year 2008, wherein, in O.S.No.440 of 2008, on the file of the I-Additional District Munsif, Tirunelveli, the plaintiffs, the defendants and the proposed party were all parties to the proceedings, besides the suit is one for specific performance seeking an equitable relief.

6.In ***S.Krishnan Vs. Rathinavel Naicker and 22 others*** reported in ***2007 (2) CTC 73***, this Court has held that in what circumstances impleading can be ordered, which reads as under:-

"17.In a nut shell, the tests to be applied for determining the right of a party to implead another, in a pending suit or other proceeding, may be crystallized into the following categories:-"

a) If without his presence no effective and complete adjudication could be made;

b) If his presence is necessary for a complete and effectual adjudication of the dispute though no relief is claimed against him;

c) If there is a cause of action against him;

d) If the relief sought in the suit or other proceedings is likely to be made binding on him;

e) If the ultimate outcome of the proceedings is likely affect him adversely;

f) If his role is really that of a necessary witness but is sought to be camouflaged as a necessary party".

7.If the petitioner herein has got any independent right over the suit property, it is open to him to work out the same independently and he cannot be allowed to be impleaded in the appeal

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and widening the scope of the same. The respondents 3 and 4 herein, who are the plaintiffs in the suit, have also opposed to the impleadment of the petitioner. The petitioner is not a necessary party to implead himself in this appeal and accordingly, this petition is dismissed.

sd/-

21/08/2017

/ TRUE COPY /

WEB COPY

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

TO

1 THE III ADDITIONAL DISTRICT &
SESSIONS JUDGE, TIRUNELVELI

2 THE PRINCIPAL SUBORDINATE JUDGE, TIRUNELVELI

+1. C.C. to M/S.V.SASI KUMAR Advocate SR.No.29016

ORDER

IN

CMP (MD) No.3806 of 2017

IN

SA (MD) No.899 of 2014

Date :21/08/2017

SMA/CM-MSA/SAR-4/31.08.2017:2P/4c