



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 23.11.2017
CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (PD) (MD) No.1655 of 2017
and
CMP (MD) No.9240 of 2017

Krishnasamy ... Petitioner/ Petitioner
Proposed 5th Defendant
vs.
1) S.Marimuthu ... 1st Respondent/1st Respondent/
Plaintiff
2) Sankaiya
3) T.Ganeshan
4) C.Ponraj
5) The Revenue Divisional Officer,
Office of the Revenue Department,
Sattur. ... Respondents 2 to 5/
Respondents 2 to 5/Defendants

Petition filed under Article 227 of the Constitution of India,
against the order made in I.A.No.60 of 2017 in O.S.No.67 of 2016
on the file of the District Munsif Court, Sattur.

For Petitioner : Mr.M.Thirunavukkarasu
For R1 : Mr.P.Saravana Kumar
For R2 to R5 : No appearance

ORDER

This revision petition has been filed against the order made
in I.A.No.60 of 2017 in O.S.No.67 of 2016 on the file of the
District Munsif Court, Sattur.

2.Learned counsel for the revision petitioner submits that
the revision petitioner sought to implead himself in O.S.No.67/16
which was filed by the 1st respondent/plaintiff for declaration to
declare him as the sole legal heir of his deceased sister
Saraswathi and for the consequential direction, stating that he
married the said Saraswathi in 1970 and out of the wedlock, a son
namely, Kumar was born, but he died on 13.11.2011 due to illness.
Thereafter, Saraswathi also died on 10.03.2016 leaving the
revision petitioner as her sole legal heir. Hence, the petitioner
filed the present interlocutory application in I.A.No.60/17
seeking to implead himself in the suit stating that he is the sole
legal heir of Saraswathi and that the 1st respondent/plaintiff who
is the brother-in-law of the revision petitioner, has no right in



the suit property nor was in possession of the same at any point of time. However, without considering the above aspects, the Court below dismissed the application for impleadment by the order impugned in this revision. Therefore, the learned counsel prays to set aside the impugned order.

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3.Learned counsel for the 1st respondent/plaintiff submits that counter affidavit was filed by the 1st respondent in I.A.No.60/17, stating that it is true that marriage was solemnised between the revision petitioner and his sister, but due to misunderstanding, on 09.02.1981, they executed a deed of dissolution of marriage in the presence of elders of Panchayat and were living separately. Therefore, it is clear that there was no status of husband-wife as between the revision petitioner and Saraswathi from 09.02.1981 onwards which facts have been accepted by the revision petitioner himself in the affidavit filed before the Sub Court, Sivakasi, in E.A.No.53/12 in E.P.No.118/08. Since Saraswathi died, the said EP was dismissed without recording her legal heir.

4.Learned counsel for the 1st respondent/plaintiff further contended that the revision petitioner after execution of the deed of dissolution of marriage in the presence of elders on 09.02.1981, married one Mareeswari and through her, five children were born to him and he is living with them in Yelayirampannai and in order to grab the properties of Saraswathi, even during the survival of the said Saraswathi, the revision petitioner obtained a legal heirship certificate of his son Kumar vide No.D.Dis.A5/41/12 dated 09.01.2012 to the effect that the revision petitioner is the legal heir of his deceased son Kumar, but the said certificate was cancelled on 02.08.2012 on the objection made by Saraswathi and after conducting due enquiry by the Tahsildar, Village Administrative Officer and Revenue Inspector of Sattur. Therefore, the petition filed by the revision petitioner who sought to implead himself in the suit with the mala fide intention to grab the properties of Saraswathi, has been rightly rejected by the Court below, which does not warrant any interference by this Court.

5.Heard the learned counsels for the revision petitioner and the 1st respondent. Despite service of notice, respondents 2 to 5 have not chosen to appear either in person or through counsel. Therefore, this Court is constrained to pass orders on merits.

6.Perusal of the records shows that in the affidavit filed by the revision petitioner before the Sub Court, Sivakasi, in E.A.No.53/12 in E.P.No.118/08 in O.S.No.8/06, he has admitted the execution of the deed of dissolution of marriage dated 09.02.1981. In support of his contention, the 1st respondent/plaintiff marked Ex.B2-Affidavit of Saraswathi in E.A.No.53/12 in E.P.No.118/08 in



O.S.No.8/06, wherein Saraswathi has averred that the revision petitioner who was arrayed as 2nd respondent therein, married her and thereafter divorced her.

7. Perusal of the records further reveals that counter affidavit filed by the revision petitioner in E.A.No.53/12 in E.P.No.118/08 in O.S.No.8/06 has been marked as Ex.B5 wherein, the revision petitioner has averred that on 09.02.1981, he and Saraswathi on their own volition executed a deed of dissolution of marriage solemnised between themselves, in the presence of the elders in Panchayat and thereafter, he went to foreign country for the purpose of his avocation. The judgment made in E.A.No.53/12 in E.P.No.118/08 in O.S.No.8/06 has been marked as Ex.B4, wherein, it has been mentioned that both the revision petitioner and Saraswathi agreed that they got divorced and living separately. In support of the contention that the revision petitioner after execution of the deed of dissolution of marriage in the presence of elders on 09.02.1981, married one Mareeswari and through her, five children were born to him and he is living with them in Yelayirampennai and only in order to grab the properties of Saraswathi, he has filed the present interlocutory application, the 1st respondent/plaintiff marked Ex.B5-photocopy of the Ration Card of the revision petitioner, wherein, it has been mentioned that the revision petitioner is the husband of the said Mareeswari. Further, the Tahsildar, Sattur, submitted a report to the Sub Court Sattur, to the effect that the deceased Saraswathi requested for issuance of legal heirship certificate of her deceased son Kumar stating that she is the only legal heir of her deceased son Kumar and further requested not to accept the legal heirship certificate dated 09.01.2012 of Kumar obtained by the revision petitioner to the effect that the revision petitioner is the legal heir of his deceased son Kumar. The said report has been marked as Ex.B1.

8. From the perusal of Exs.B1 to B5, the Court below held that there is no evidence to hold that the revision petitioner is the legal heir of deceased Saraswathi to implead him in the suit and accordingly, dismissed the interlocutory application for impleadment. I do not find any infirmity in the impugned order passed by the Court below which does not need any interference in the hands of this Court.

Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar



To

1. The District Munsif,
Sattur.

2. -Do- Through Chief Judicial Magistrate,
Virudhunagar District.

+1cc to Mr.P.Saravana Kumar , Advocate Sr.No.89188
+1cc to Mr.M.Thirunavukkarasu, Advocate Sr.No.89241

BALA

VB/KP/SAR1/13/12/2017/4P/5C

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