



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2017

CORAM:

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.181 of 2017 (PD)
and
C.M.P(MD)No.791 of 2017

1. Iyyammal alias Andalammal
2. Subbulakshmi
3. Jeyakodi

... Petitioners/Petitioners/
3rd parties

Vs

1. S. Kanagalakshmi
2. S. Subburam
3. R. S. Samy
4. S. Rengasamy
5. S. Krishnasamy
6. K. Kaliappan
7. K. Karuppasamy
8. Ramasubbu
9. M. Muniasamy
10. Subbulakshmi
11. Seeniammal
12. Subbiah
13. Manikandan
14. Baskaran

... Respondents/Respondents/
Plaintiffs

... Respondents/Respondents/
Defendants

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.167 of 2015 in O.S.No.04 of 2014 on the file of the Learned 3rd Additional District Judge, Tirunelveli, dated 24.02.2016 by allowing this Civil Revision Petition and to order to implead the petitioners as defendants in O.S.No.4 of 2014 on the file of the Learned 3rd Additional District Judge, Tirunelveli.

For Petitioners : Mr.Ananth C.Rajesh

ORDER



O.S.No.04 of 2014 by the learned III Additional District Judge, Tirunelveli, dated 24.02.2016, by allowing this Civil Revision Petition and to order to implead the petitioners as defendants in O.S.No.04 of 2014, on the file of the Learned III Additional District Judge, Tirunelveli.

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2.The petitioners are the third parties to the suit in O.S.No.4 of 2014. The respondents 1 & 2 are the plaintiffs. The respondents 3 to 14 are the defendants 1 to 12. The respondents 1 & 2 filed suit in O.S.No.4 of 2014 against the respondents 3 to 14 before the District Court, Tirunelveli, for partition claiming 1/3 share. The respondents 5 to 9/defendants 3 to 7 filed written statement. The third respondent/first defendant also filed written statement. Subsequently, they did not appear and contest the suit. Therefore, they were set ex-parte in the suit. Trial Commenced. The respondents 1 & 2 filed proof affidavit and suit was posted for cross-examination of P.W.1 on 15.10.2015. At that time, the petitioners filed I.A.No.167 of 2015 for impleading themselves as defendants 13 and 15. According to them, the respondents 1 to 4/plaintiffs and defendants 1 & 2 have sold number of properties and they have not included certain properties in the suit for partition. The petitioners have right over the suit properties. The judgment and decree, dated 05.07.2005, made in O.S.No.116 of 2004, is not final and it is not binding on them. The first petitioner executed a settlement deed, dated 12.09.2006 in favour of petitioners 2 & 3 and the said settlement deed is not invalid as respondents 1 & 2 have not challenged the same. The petitioners 2 & 3 sold the property on 03.06.2011 to third parties and without the petitioners being parties to the suit, the respondents 1 & 2 cannot challenge the settlement deed, dated 12.09.2006 and sale deed dated 03.06.2011.

3.The respondents 1 & 2 filed counter affidavit and denied all the averments mentioned in the affidavit and stated that the petitioners have no right, interest or title over the suit property. One of the daughter of Subba Naicker (Subbulakshmi W/o.Ramasubbu Naicker) filed suit in O.S.No.116 of 2004 against the petitioners herein and respondents 1 to 4, who are the mother, sister, sister-in-law and brothers of Subbulakshmi. The said suit was dismissed. In the said judgment and decree, it was held that the female heirs of Subba Naicker have no share in the ancestral property and only male members have shares i.e., husband of first respondent and father of second respondent, three sons of Subba Naicker alone. No appeal was filed by the petitioners against the judgment and decree, dated 05.07.2005 and the said judgment has become final. The respondents 1 & 2 are wife and son of S.Subbaiah one of the sons of Subba Naicker. The respondents 3 and 4 are the other two sons of Subba Naicker. They only have shares in the suit property. After the judgment passed in O.S.No.116 of 2004, some of the properties belonged to the respondents 1 to 4 were sold and present suit is filed for partition of remaining properties. Therefore, the petitioners are not necessary and proper parties to the suit.



4.The respondents 5 to 8 filed counter and stated that they have no objection for the application being allowed.

5.The learned Judge considering the affidavit and counter affidavit and all the evidence and materials on record, especially, the judgement and decree, dated 05.07.2005, made in O.S.No.116 of 2004 held that the petitioners are not necessary and proper parties to the suit dismissed the application.

6.Against the said order of dismissal, the petitioners have filed the present Civil Revision Petition.

7.The learned counsel for the petitioners submitted that the learned Judge erroneously dismissed the application on the ground that the petitioners have no right to the suit property. The learned Judge failed to see that the petitioners filed appeal in A.S SR (MD)No.45239 of 2015 along with M.P(MD)No.1 of 2015 on 20.01.2016 and notice has been ordered on 20.01.2016 in M.P(MD)No.1 of 2015. Without considering this fact, the learned Judge dismissed the application on the ground that no appeal has been filed against the judgement and decree, dated 05.07.2005, passed in O.S.No..116 of 2004.

8.I have heard the learned counsel appearing for the petitioners and also perused all the materials on record.

9.The petitioners seek to be impleaded as defendants 13 to 15 in the suit on the ground that they have right in the suit properties and respondents 1 & 2 are challenging the settlement deed, dated 12.09.2006 and sale deed, dated 03.06.2011. From the materials on record and the judgment and decree, dated 05.07.2005 in O.S.No.116 of 2004 it is clear that the petitioners and other female heirs of Subba Naicker, have no right in the ancestral properties of Subba Naicker. The respondents 1 & 2 filed suit for partition claiming 1/3 share as wife and son of S.Subbaiah deceased son of Subba Naicker. They are not claiming relief of cancellation of settlement deed or sale deed. It is pertinent to note that Subba Naicker died on 07.03.1976. Till date, there is no judgment holding that the petitioners and other female heirs are entitled to have a share in the ancestral property as per the amendment of the year 2005 of Hindu Succession Act, 1956 and they have become co-parcener as per the amendment. The petitioners now claiming that they have filed an appeal in AS SR (MD) No.45239 of 2015 and the same is pending and notice was ordered in M.P(MD)No.1 of 2015. In the circumstances, I hold that the petitioners are not proper and necessary parties to the suit and there is no illegality or irregularity in the order, dated 24.02.2016, passed in I.A.No.167 of 2015 by the learned III Additional District Judge, Tirunelveli warranting interference by this Court.



10. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

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Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

The III Additional District Judge,
Tirunelveli.

+ 1 CC TO Mr. ANANTH C. RAJESH, ADVOCATE IN SR No. 4776

AM

TE/CM-MSA : 17/02/2017 : 4P/3C

C.R.P (MD) No. 181 of 2017 (PD)
and
C.M.P (MD) No. 791 of 2017
30.01.2017