



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.76 of 2017 (PD)

and

C.M.P (MD) No.282 of 2017

Shajaathi

.. Petitioners/ Respondent
/2nd Plaintiff

Vs.

1.Kapiba

..1st Respondent/Petitioner/
1st Plaintiff

2.Kaliyulla @ Periya Ibrahim

3.Kadar Masdhan Baham

4.Sybunisha

..Respondents 2 to 4/
Respondents/ Defendants

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the Fair and Decretal Order dated 12.04.2016 passed in I.A.No.663 of 2014 in O.S.No.93 of 2009 on the file of Sub Court, Srivilliputhur, Virudhunagar District by allowing this Civil Revision Petition.

For Petitioner : Mr. M.Ashokkumar

ORDER

This Civil Revision Petition has been filed to set aside the fair and Decretal Order dated 12.04.2016 passed in I.A.No.663 of 2014 in O.S.No.93 of 2009 on the file of Sub Court, Srivilliputhur, Virudhunagar District.

2. The petitioner is the 2nd plaintiff in O.S.No.93 of 2009 on the file of Sub Court, Srivilliputhur, Virudhunagar District. The first respondent is the first plaintiff. The respondents 2 to 4 are defendants 1 to 3 in O.S.No.93 of 2009. The petitioner and first respondent filed suit for partition. Pending suit, the petitioner filed I.A.No.663 of 2014 for transposing the petitioner as fourth respondent.



3. According to the first respondent, the petitioner in collusion with respondents 2 to 4 is not conducting the case. The petitioner filed counter stating that in the year 2010 itself a compromise had been arrived at between the parties and they have settled the matter. The first respondent is proceeding with the suit in spite of the compromise entered. Further, other sharers are also entitled their share in the suit property. The first respondent is not entitled to have her share as claimed in the suit. The learned Judge considering the averments in the affidavit and counter affidavit and the fact that the petitioner engaged the same Advocate appearing for the first respondent, allowed the application transposing the petitioner as fourth defendant.

4. Against that order, the petitioner has come out with the present Civil Revision Petition.

5. The learned counsel appearing for the petitioner submitted that the learned Judge has not considered the provisions under Order 1 Rule 10 of CPC in proper perspective and the learned Judge has not passed any speaking order and failed to see that as per Order 1 Rule 10 of CPC necessary party could be impleaded and a party who is not a necessary party can be deleted. He has also submitted that the counsel engaged by the petitioner and first respondent did not send any notice expressed his un willingness to appear on behalf of the petitioner.

6. I have heard the learned counsel appearing for the petitioner and perused the materials available on record.

7. The petitioner and first respondent has jointly filed the suit for partition. The first respondent stated that petitioner is not co-operating for conducting the case and acting against the interest of the first respondent in collusion with the defendants in the suit. In the circumstances, first respondent filed Interlocutory application to transpose the petitioner as fourth defendant. From the counter filed by the petitioner it is clear that according to the petitioner, the matter was already compromised and has been settled between the parties and in spite of the same, the first respondent is proceeding with the suit. The petitioner further stated that some other sharers are also available and therefore, the first respondent is not entitled to share as claimed in the suit. From the records it is seen that the petitioner is not co-operating with first respondent in conducting the case.

8. The learned Judge has considered all these facts in proper perspective and also took note of the counter filed by the petitioner has allowed an application. The learned Judge has exercised the power conferred on him properly and there is no irregularity or illegality warranting interference by this Court.



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9. In the result, the Civil revision petition is dismissed.
No costs. Consequently, connected Miscellaneous Petition is
closed.

/True copy/

Sd/-
Assistant Registrar(AE)

Sub Assistant Registrar

To
The Subordinate Judge, Srivilliputhur, Virudhunagar District
+1cc to M/s.M.Ashokkumar, Advocate SR.NO.2902

trp
sm:RR-BS:2.2.2017:3P/3C

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