

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2018

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

C.R.P. (PD). No. 2539 of 2015

and

M.P. No. 1 of 2015

1. C.Arumugam
2. A.Sasikumar
3. A.Vijayakumar
4. R.Kalarani

...Petitioners

Vs

1. K.Murugesan
2. Kousalya
3. Senthilkumar
4. Usha Rani
5. Selvakumar
6. Sathishkumar
7. Suseela
8. R.Vasanth
9. Kasthuri
10. Santha
11. J.Sakunthala
12. T.Vijaya
13. S.P.Rajagopal

14. Santhi

15. Sindhuja

16. Minor Yathavaraj

(Rep. by guardian mother Santhi 14th respondent)

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order dated 30.01.2015 in I.A.No.630 of 2014 in O.S.No.396 of 2011 on the file of the learned II Additional Subordinate Judge, Salem.

For Petitioners : Mr.D.Shivakumaran

For Respondents : Mr.V.Vedachalam

ORDER

When the petitioners sought for impleading themselves as defendants 16 to 19 in the suit in O.S.No.396 of 2011, their application filed under Order 1 Rule 10 of CPC came to be rejected, which is under challenge in the present revision petition.

2. The suit is for partition. The petitioners claim to be the descendants of a common ancestor to whom the suit property belonged. Since, they have claim to have a share in the property, they sought for impleading themselves in the suit.

3. The respondents herein have taken a defence in their counter statement that the suit property is a self acquired property of Ramasamy Chettiar and that the petitioners, who claim themselves to be the children of late Ponnammal, have no rights over the same and as such, they need not be parties to the suit. A further defence was taken in the counter that the petitioners have made a categorical statement in the registered mortgage deed stating that they have no rights over the suit property and that they have signed the Deed only by way of abundant caution. In view of such an admission, they need not be made as parties. The trial Court by relying upon the statement made in the mortgage deed had found that the petitioners are not proper or necessary parties to the suit.

4. The issue as to whether there was a proper and valid Will and whether the averments in the mortgage deed are binding, to exclude the petitioners share in the suit property, is a triable issue. When the petitioners claim that they have a common ancestor through whom the suit property is alleged to have devolved on them, it would be appropriate to give them an opportunity to put forth their case to establish their rights, if any. As such, the reasoning of the trial Court in rejecting the petitioners application, may not be proper.

M.S.RAMESH.,J

jen/hvk

5. In the light of the above observations, the order dated 30.01.2015 passed in I.A.No.630 of 2014 in O.S.No.396 of 2011 is set aside. Consequently, the petitioners herein are directed to be impleaded as defendants in the suit in O.S.No.396 of 2011.

6. Since the suit is of the year 2011, the trial Court shall endeavour to complete the proceedings as expeditiously as possible.

7. Accordingly, the Civil Revision Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

05.12.2018

Index:Yes/No
Internet:Yes/No
jen/hvk

To
The II Additional Subordinate Judge,
Salem.

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