

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP(NPD).No.4677 of 2017
and CMP.No.22014 of 2017

Periya gounder

.. Petitioner

Vs

1.S.Aruchamy
2.Subbannan
3.Palaniammal
4.Lakshmi
5.Periyanayaki
6.Baghyam

.. Respondents

PRAYER

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decreetal order dated 27.11.2017 made in IA.No.44 of 2017 in AS.No.112 of 2013 on the file of the V Additional District Court, Coimbatore.

For Petitioner : Mr.P.Mathivanan

For Respondents: Mrs.P.T.Ramadevi for R2

: Mr.A.Sundaravadhanan for R3 to R6

ORDER

According to the revision petitioner, the second respondent

has filed a suit in OS.No.585 of 1999 on the file of the I Additional Sub Court, Coimbatore against other respondents for partition and separate possession. The court below decreed the suit by allotting 1/6 share each to the respondents herein. Aggrieved by the same, the first respondent has preferred an appeal in AS.No.112 of 2013 on the file of the V Additional District Court, Coimbatore. In the aforesaid appeal suit, the revision petitioner / third party has filed an application under Order 1 Rule 10 (2) r/w Section 151 of the Civil Procedure Code in IA.No.44 of 2017 to implead him as a party. According to the revision petitioner, the first respondent has filed the above suit for relief of partition without impleading the revision petitioner as a party. The revision petitioner had filed a suit in OS.No.396 of 2012 for the relief of permanent injunction and the same was decreed. On enquiry, the revision petitioner came to know that the **second** respondent had filed a suit in OS.No.585 of 1999 for the relief of partition with regard to the suit property which was decreed, wherein the revision petitioner was not added as a party. Thereafter, the revision petitioner has filed a suit in OS.No.1808 of 2015 for the relief of partition and for declaration of decree and judgment dated 06.07.2013 passed in the present suit. At this stage, the revision petitioner came to know that first respondent has filed the present appeal and hence, the revision

petitioner has filed the instant application to implead himself as a party in the said appeal. The said application was dismissed and hence, the revision petitioner has filed the present Civil Revision Petition before this Court.

2. The learned counsel for the revision petitioner would submit that if the revision petitioner is added as a party in the appeal suit, no prejudice would be caused to the respondents. The petitioner also claiming right over the suit property. Since the revision petitioner was born through first wife of Samy Gounder, he is also entitled for share in the aforesaid property. Without considering the aforesaid fact, the Appellate court has rejected the contention of the revision petitioner. Therefore, the order passed by the Appellate court is liable to be set aside.

3. Per contra, the learned counsel for the second respondents would submit that the revision petitioner has already filed a suit in OS.No.1808 of 2015 before the III Additional Sub Court, Coimbatore for partition and to set aside the judgment and decree passed in OS.No.585 of 1999 against the respondents and the same is pending. In the aforesaid suit, the respondents are also party.

Therefore, when the revision petitioner has already challenged the judgment and decree in the aforesaid suit, now filing the instant application to implead themselves as party in the appeal suit is nothing but to protract and to drag on the proceedings in the Appeal suit. Ultimately, if the decision rendered in the aforesaid OS.No.396 of 2012 is binding on the respondents, therefore, there is no necessity to implead the revision petitioner in the present appeal suit. Therefore, the Civil Revision Petition is liable to be dismissed.

4. In the light of the above submissions of the parties, when the revision petitioner has already filed a suit in OS.No.1808 of 2015 for partition and to set aside the decree dated 06.07.2013 passed in OS.No.585 of 1999, in which the respondents are also party and the decision in the aforesaid suit is binding on the respondents. Hence, the revision petitioner is not necessary party in the Appeal suit. Therefore, the court below has rightly dismissed the application by holding that the revision petitioner can work out his remedy in the aforesaid suit. Hence, the Civil Revision Petition is liable to be dismissed.

5. Further, the observations made by the Appellate court in

the present application would not influence the trial court to decide the issue on merits in the aforesaid suit.

6. Thus, the Civil Revision Petition fails and accordingly, the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

06.02.2018

Speaking/Non-Speaking order
Index :Yes/No
Internet:Yes/No
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WEB COPY

D. KRISHNAKUMAR J.,

lok

To

The V Additional District Court,
Coimbatore.



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