

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.780 of 2014
& M.P.No.1 of 2014

Gunabooshani Ammal (died)
1.Purushothaman

.. Petitioner

Vs.

1.K.Kumaran
2.K.Venkatesh

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 10.01.2014 made in I.A.No.956 of 2011 in O.S.No.160 of 1996 on the file of the Additional Subordinate Court, Tindivanam.

For Petitioner : M/s.R.Sripriya

For Respondents : Mr.T.Murugamanickam,
Senior Counsel,
for Mr.R.Prem Narayan

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 10.01.2014 made in I.A.No.956 of 2011 in O.S.No.160 of 1996 on the file of the Additional Subordinate Court, Tindivanam.

2.The petitioner is plaintiff and respondents are the third parties in O.S.No.160 of 1996 on the file of the Additional Subordinate Court, Tindivanam. The petitioner filed the said suit for partition against the defendants therein. The right of parties is based on the two Wills dated 26.10.1936 and 09.11.1936, executed by one Amirthammal. According to the respondents, as per the said Will, initially Thanjammal and Govindasamy will have life interest. After their life, their male issues will have life interest. If Thanjammal and Govindasamy have no male issues, then their female issues will have life interest. In the said suit, the respondents filed I.A.No.956 of 2011 under Order I Rule 10 of C.P.C to implead themselves as defendants 23 and 24 in the suit. The respondents/proposed parties claiming to be the sons of Krishnan @ Krishnasamy, the first defendant, filed the present application to implead themselves as defendants 23 and 24 in the suit O.S.No.160 of 1996. According to the respondents, as sons of first defendant, they have right in the suit properties and they are necessary and proper parties to the suit.

3.Both the petitioner and first defendant filed separate counter affidavit and denied that the respondents are sons of first defendant. The first defendant having denied that the respondents

are sons of the first defendant, submitted that the respondents have no locus standi to file the present petition to implead them in the present suit as they are not proper and necessary party to decide the issue in the suit.

4.The learned Judge considering the averments in the affidavit, counter affidavit and materials available on record, allowed the application on the ground that in the suit, if it is decided that only male issues of Thanjammal have right to the property, the respondents will have a right in the suit property, otherwise, they have to file a separate suit to establish their right.

5.Against the said order dated 10.01.2014 made in I.A.No.956 of 2011 in O.S.No.160 of 1996, the petitioner has come out with the present Civil Revision Petition.

6.Heard the learned counsel for the petitioner as well as the learned Senior Counsel for the respondents and perused the materials available on record.

7. The learned Judge has not considered the contention of the first defendant and petitioner that the respondents are not the sons

of first defendant. Further, till the first defendant is alive, his children will have no right in the suit properties. The respondents have to establish that they are sons of Krishnan @ Krishnasamy, the first defendant and then only they can claim any right in the suit property after the life time of Krishnan @ Krishnasamy, the first defendant.

8.The learned Judge without considering the above facts, ordered to implead the respondents as party defendants to the suit and committed an irregularity, warranting interference by this Court.

9.For the above reason, the impugned order of the learned Judge dated 10.01.2014 made in I.A.No.956 of 2011 in O.S.No.160 of 1996 is liable to be set aside and it is hereby set aside.

10.In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

01.03.2018

Index : Yes/No

gsa

To

The Additional Subordinate Judge,
Tindivanam.



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V.M.VELUMANI,J.

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