

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2018

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

CRP.PD.No. 2559 of 2018

and

C.M.P.No.16024 of 2018

Leela @ Leelavathi

...Petitioner

Vs

Rajammal

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order dated 20.04.2018 passed in I.A.No.1 of 2018 in SOP.No.1 of 2018 on the file of the Sub Court at Palacode.

For Petitioner : Mr.V.Sakkarapani

For Respondent : Mr.S.Kolandasamy
for Mrs.Kanimozhimathi

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ORDER

The order under Challenge in the present revision is one under Order 1 Rule 10 of Civil Procedure Code, wherein the respondent herein was impleaded as a party. The case of the respondent before

the Court below was that she had derived certain interest from the properties of late Suresh through an unregistered Will dated 24.01.2007 and as such, she is a necessary party to the proceedings. The Court below by accepting the contention of the respondent herein had observed that the Will is the subject matter of three suits pending before the District Munsiff Court, Palacode for proving the Will and till such time, in view of the fact that the deceased Suresh had bequeathed his immovable properties in favour of the respondent herein, she is a necessary and proper party to the proceedings.

2. The learned counsel for the petitioner submitted that the respondent cannot claim any right over the movables claimed in the succession certificate by the mother of the deceased. Since the will relates to immovable property alone, as such, the Court below was not justified in impleading her as a party.

3. The learned counsel for the respondent, on the other hand, vehemently opposed the submissions on the ground that the present revision is liable to be dismissed in view of suppression of certain subsequent facts and events. According to him, pursuant to the impugned order, the petitioner herein herself had taken out an

application in I.A.No.2 of 2018 dated 25.04.2018 seeking to carry out the rectification of the amendment to the original petition, which came to be allowed. Likewise, the petitioner had also filed another application in I.A.No.4 of 2018 dated 23.07.2018 seeking for certain amendment with regard to the provision of law in the original petition. In the mean while the respondent herein had filed an application in I.A.No.3 of 2018 seeking for rejection of the original petition under Order 7 rule 10 since the respondent herein was a party in all the three interim applications and suppression of these facts before this Court would amount to abuse of process of law and on this sole ground alone, the revision is liable to be dismissed. The learned counsel further submits that the Will through which she claims right is the subject matter of the civil suits and that in case the respondent herein succeeds in the suit, she would be entitled for the benefits under the present proceedings and therefore she is a necessary and proper party before the Court below.

4. I have given my careful consideration to the submissions made by the respective counsels. The only ground on which the respondent herein claims right over the immovable properties of deceased Suresh is through an unregistered Will dated 24.01.2007. It

is also submitted by the counsels that the three Civil Suits touching upon the Will and for proving the will also pending before the respective Courts. The Court below by observing that, when there exists a will in favour of the respondent herein wherein the deceased Suresh had bequeathed his immovable properties, had felt that she is a proper and necessary party to the proceedings. On plain reading of the Will, it is seen that the immovable properties of late Suresh alone has been bequeathed in favour of the respondent herein who claims to be the adopted sister of deceased Suresh. The movable properties are conspicuously absent in the Will. The movable properties involved in the present petition filed under Section 372 and 376 of Indian Succession Act relate to Bank balances lying to the credit of various banks in Bangalore, Karnataka and the deceased had died within the jurisdiction limit of the learned District Subordinate Judge, Palacode. When the respondent claims right over these bank accounts, it is incumbent on her part to *prima facie* establish that she is also a beneficiary under the Will in respect of the movable properties. This aspect has not been gone into by the Court below while allowing the implead application. Mere reference to the Will ought not to have been the basis for which the learned Sub ordinate Judge impleaded the respondent herein.

5. The learned counsel for the respondent further submitted that since suits are pending for proving the will, the respondent would be entitled for the benefits of the movables in the present proceedings or share therefrom and since such a decision is pending before the Civil Court, she must be made a proper party. I am unable to accept such a contention. As on date, what requires to be looked into for the purpose of determining whether she is a proper or necessary party, is a *prima facie* case established by claiming her right in the proceedings. The only ground raised is that she is a beneficiary under the Will of Suresh whose evidence is that the properties which came to be devolved on the respondent herein are the immovable properties and do not cover the movables. It is needless to point out that in case the respondent succeeds in the Civil Proceedings before the Court below and if she has the benefit of any finding in her favour, she would be entitled to the movables also and it will be open to her to work out her remedies through appropriate proceedings. As such the mere pendency of the Civil Proceedings may not entitle her to be a party in the present proceedings.

6. The learned counsel for the respondent also relied upon

certain proceedings which transpired after passing of the impugned order and submitted the suppression of the applications filed by her wherein she had recognized the respondent as a party, the civil revision petition requires to be dismissed. Here again, I am not in concurrence with such submission. The applications filed by the petitioner herein are (i) to amend the original petition, in view of the amendment order and (ii) to include the provisions of section 376 of Indian Succession Act in the original petition. In these two applications filed by the respondent herein, she was already made a party in the order impugned in the present revision petition. As such, just because the petitioner had sought for amendment in the cause title in the original petition, it cannot be said that it is a vital fact which requires to be disclosed in the present petition. Likewise, the petitioner had no other option other than filing the amendment to implead the late Suresh under the Section 378 Indian Succession Act in the Original Petition. Since the respondent herein was already a party in the Original Petition, as such the non disclosure of these two facts may not amount to suppression of vital facts and consequently may not amount to abuse of process of law. In view of my findings, I do not find any justification on the part of the Court below to have impleaded respondent herein as a party.

7. It would not be out of place to mention herein that the observations made that the respondent's right over the immovables involved in the Succession proceedings were made only for the purpose of answering the grounds raised by the petitioner herein and that the said finding on the facts should not be cited as a precedent before the Civil Courts and the Civil Courts shall independently decide the suits without being influenced by the observations made in the present petition. In the light of the above observations, the order passed in I.A.No.1 of 2018 in SOP.No.1 of 2018 on the file of the Sub Court, Palacode is set aside, consequently, Civil Revision Petition stand allowed. Consequently connected Miscellaneous Petition is closed. No costs.

29.10.2018

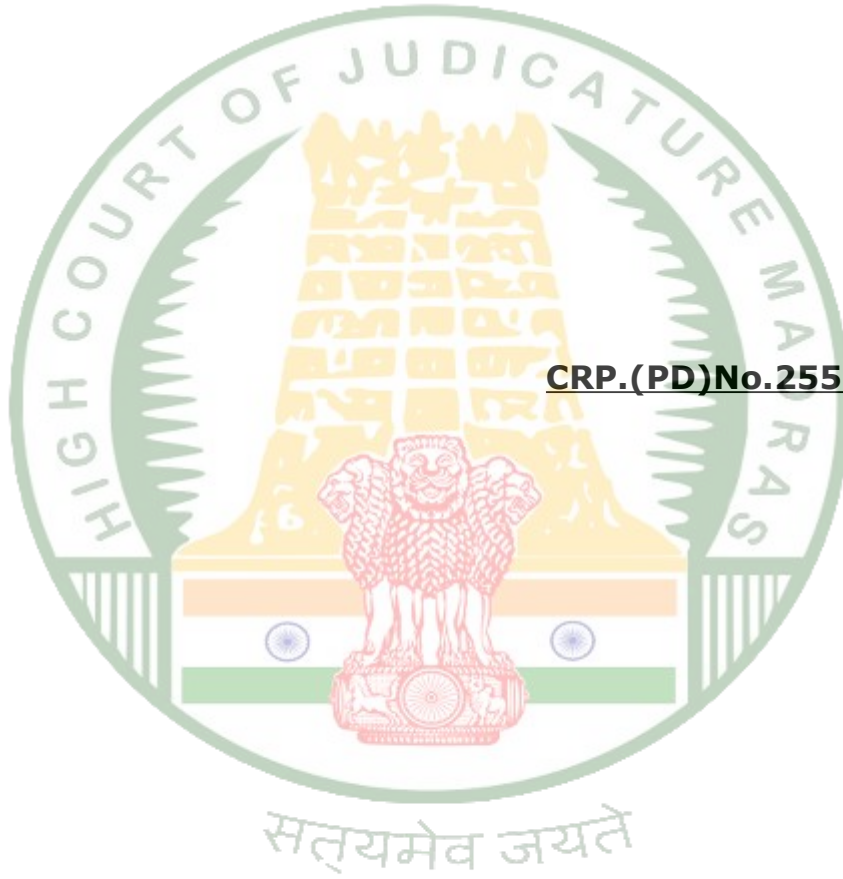
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To
The Sub Court,
Palacode.

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M.S.RAMESH. J.,

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