

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.965 of 2013
& M.P.No.1 of 2013

1.Annapoorniammal
2.Prabhu
3.Latha
4.Ramesh Kumar

.. Petitioners

Vs.

1.Chinnaramasamy gounder
2.N.R.Chandrasekaran
3.N.R.Rangaraj
4.N.R.Padmavathy
5.Palaniammal
6.Subbammal
7.Baby Alias Gnana sundari
8.Rajeswari
9.Maheswari
10.Parameswari
11.Jagadeswari

.. Respondents

(R6 to R11 brought on record as legal heirs
of the deceased first respondent viz. CMP.Nos.
17088 to 17090 of 2017 in C.R.P.No.965 of 2013)

Civil Revision Petition filed under Article 227 of the

Constitution of India, against the fair and decretal order dated 13.12.2012 made in I.A.No.1524 of 2012 in A.S.No.25 of 2012 on the file of the Principal District Court, Coimbatore.

For Petitioners : Mr.C.R.Prasanan

R1 : died

For R2 to R5 : Not ready in notice

For R6 to R11 : Mr.S.Arjun

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 13.12.2012 made in I.A.No.1524 of 2012 in A.S.No.25 of 2012 on the file of the Principal District Court, Coimbatore.

2.The petitioners are plaintiffs 2 to 4 and respondents are defendants 2 to 4 in O.S.No.656 of 1999 on the file of the Subordinate Court, Coimbatore. The fifth respondent herein is proposed party in First Appeal A.S.No.25 of 2012 on the file of the Principal District Court, Coimbatore. The respondents 6 to 11 are the legal heirs of the deceased first respondent. The petitioners along with one Peria Ramasamy/first plaintiff filed the said suit

against the first respondent for partition of the suit property and for allotting 2/3 shares to them. Pending suit, first plaintiff/Peria Ramasamy died. First plaintiff's two sons and one daughter/respondents 2 to 4 herein were brought on record as defendants 2 to 4. After contest, the said suit was dismissed on 19.01.2007. Challenging the same, the petitioners have filed A.S.No.25 of 2012. In the said appeal, the petitioners filed I.A.No.1524 of 2012 under Order I Rule 10 C.P.C. to implead the fifth respondent as 5th respondent in the First Appeal.

3. According to the petitioners, fifth respondent herein is the wife of deceased first plaintiff and was not impleaded in the suit by mistake and she is necessary party in the proceedings for partition.

4. The respondents 2 to 5 remained exparte. The first respondent filed counter and opposed the said application and contended that the petitioner did not comply with the provisions under Order XXII Rule 3 C.P.C. to implead the legal heirs of the deceased first plaintiff. The legal heirs of the deceased first plaintiff were already brought on record and the present application is filed only to drag on the proceedings and prayed for dismissal of the

application.

5.The learned Appellate Authority considering the averments made in the affidavit, counter and the fact that the fifth respondent was not impleaded in the suit, the suit was decided without her presence and appeal also can be heard without her presence, dismissed the application. The learned Appellate Authority has further held that the respondents 2 to 4, who are sons and daughter of the deceased first plaintiff respectively, were already brought on record. In such circumstances, fifth respondent is not a necessary party to the First Appeal.

6.Against the said order of dismissal dated 13.12.2012 made in I.A.No.1524 of 2012 in A.S.No.25 of 2012, the present Civil Revision Petition is filed by the petitioners. Pending Civil Revision Petition, first respondent died and respondents 6 to 11 were brought on record as per the order dated 16.03.2018 made in C.M.P.Nos.17088 to 17090 of 2017. The respondents 2 to 5 remained exparte in the trial Court.

7.Heard the learned counsel for the petitioners as well as the

respondents 6 to 11 and perused the materials available on record.

8.It is an admitted fact that the fifth respondent is wife of the deceased first plaintiff. Respondents 2 to 4, who are the sons and daughter of the deceased first plaintiff, were already brought on record in the suit. When some of the legal representatives of the deceased first plaintiff are on record, the suit will not abate for non impleading of other legal heirs.

9.It is well settled that in a suit for partition, all the parties who have interest in the suit properties, which was sought to be partitioned, must be made as parties. A person, who has interest in the said property can be impleaded at the appellate stage also. In the present case, fifth respondent herein, who is the wife of the deceased first plaintiff, as a Class I heir, will be entitled to a share of the deceased first plaintiff. She is not only proper party, but also necessary party in the proceedings for partition. The learned Judge without properly appreciating the facts and law, has erroneously dismissed the application and thereby, failed to exercise his power properly.

10. For the above reason, impugned order of the learned Judge dated 13.12.2012 made in I.A.No.1524 of 2012 in A.S.No.25 of 2012 is liable to be set aside and it is hereby set aside. Accordingly, I.A.No.1524 of 2012 is allowed and the learned Appellate Authority is directed to implead fifth respondent in the appeal and issue notice to the fifth respondent and proceed with the appeal. The learned counsel for the respondents 6 to 11 submitted that the intention of the petitioners is only to drag on the proceedings. In view of the said contention, the learned Appellate Judge is directed to dispose of the appeal in A.S.No.25 of 2012, after issuing notice to all the parties, as expeditiously as possible in any event, not later than four months from the date of receipt of a copy of this order.

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

Index : Yes/No

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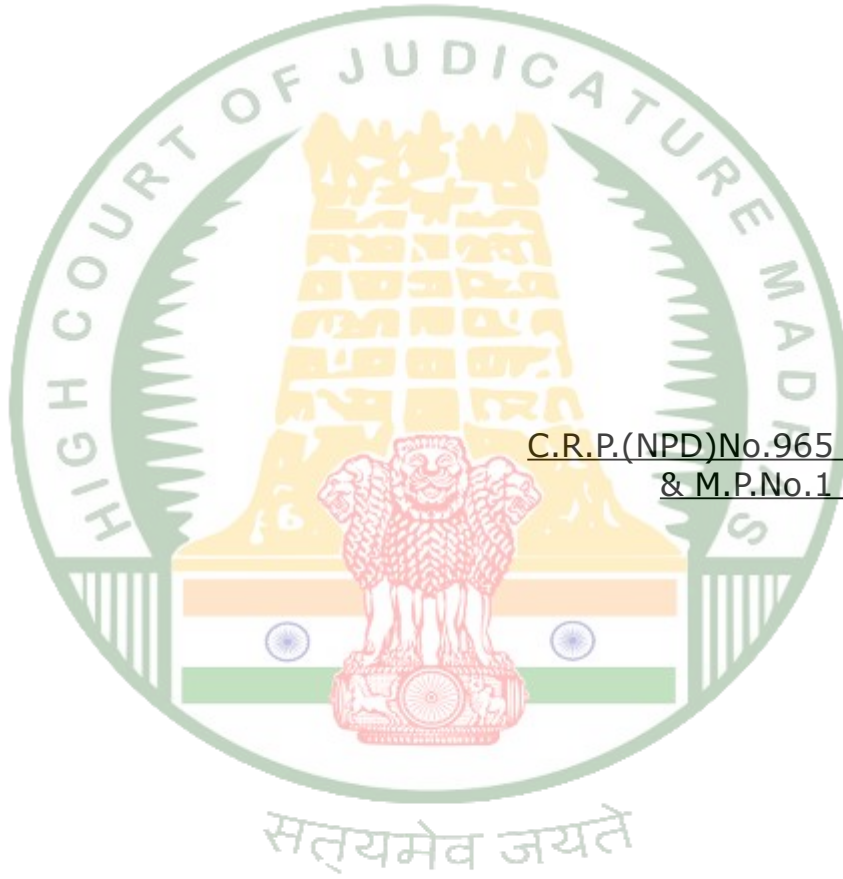
The Principal District Judge, Coimbatore.

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V.M.VELUMANI, J.

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