



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (PD) (MD) No.1149 of 2014

and

M.P. (MD) No.1 of 2014 and C.M.P. (MD) No.2050 of 2018

Mahajothi Financiers,
Throught its Partner,
Rajamohan

:Petitioner / Petitioner / 3rd Party -
Proposed defendant

vs.

1.Solairajan :1st Respondent / 1st Respondent / Plaintiff

2.Ravichandran

3.Chitrakala :2 and 3rd Respondents / 2 and 3rd Respondents
/ Defendants 1 and 2

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 06.12.2013, in I.A.No.421 of 2012 in O.S.No.63 of 2011 on the file of the Additional District Judge, Dindigul.

For Petitioner :Mr.Lakshmi Shankar

For R1 :Mr.A.R.Sethupathy

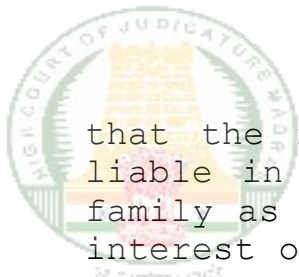
For R2 :Mr.J.Vishwanathan

For R3 :Mr.G.Aravindan

ORDER

The revision petitioner appears to be the decree holder in the suit filed against the first defendant and wants to proceed against the property that may be allotted to the share of the first defendant in the suit, which was for partition. Since the revision petitioner's petition in I.A.No.421 of 2012 in O.S.No.63 of 2011 on the file of the Additional District Court, Dindigul, was dismissed, the above civil revision petition is filed.

2. It is contended by the revision petitioner that the debt incurred by the first defendant was for the family business and



that the first defendant as 'Karthha' of the family is not only liable in his personal capacity, but also as Karth of the joint family as father. The petitioner states that he is also having an interest over the properties and that therefore, he is a necessary party.

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3. Though the petition was opposed by the contesting respondents on various grounds, the learned Additional District Judge, Dindigul, however, dismissed the petition only on the sole ground that the first respondent / plaintiff is not a party in the suit in O.S.No.54 of 2007 alleged to have been filed by the revision petitioner and that the decree is not binding on the first respondent in the partition suit. Since no relief was sought for against third parties in the suit in O.S.No.54 of 2007, it is held by the lower Court that the presence of the revision petitioner is not necessary for adjudication of the issues.

4. Having regard to the facts that are stated before this Court, this Court is of the view that the petitioner is also a necessary party, in the sense that his interest was only to proceed against the property, that may be allotted to the father. It is also admitted that the father, who is the first defendant, is no more and others are his legal representatives. Since the revision petitioner states that the debt is binding on other family members, it is stated that he must be made as party in the suit filed for partition. If the debt is binding on all members, he could have obtained the decree against all the members of the family and can prove against every property in the suit without being a party to the suit.

5. However, the fact that the petitioner can proceed against the property at least in respect of the shares or property that may be allotted to the share of the first defendant in the suit cannot be turned down. The revision petitioner apprehends collusion and hence is entitled to put forth his case as a person entitled to execute the decree by proceeding against the properties of father. Since the amount recoverable is huge, this Court is inclined to allow this civil revision petition. As a result, the revision petition is allowed and the order in I.A.No.421 of 2012 in O.S.No.63 of 2011, on the file of the Additional District Judge, Dindigul, dated 06.12.2013, is set aside and I.A.No.421 of 2012 stands allowed. I.A.No.421 of 2012 stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CSII)



To

1.The Additional District Judge,
Dindigul.

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2.The Section Officer, (2 COPIES)
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC TO Mr. H.LAKSHMI SHANKAR , Advocate, Sr.No. 62397

+1 CC TO Mr.T.R.SUBRAMANIAN , Advocate, Sr.No. 62147

+1 CC TO Mr. J.VISWANATHAN , Advocate, Sr.No. 62127

JAM/01/06/2018/ CM/ SAR 3/ 3P-7C

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