



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 27.09.2018

DELIVERED ON : 24.10.2018

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (NPD) (MD) No.1508 of 2015

and

M.P. (MD) No.1 of 2015

Haja Mohideen .. Petitioner/Petitioner/Third Party/Proposed
6th Defendant

Vs.

1.Mohammed Saleem .. 1st Respondent/1st Respondent/Plaintiff

2.Mohammed Basheer

3.Syeda Banu

4.Fathima Jasmin

5.Rinosa

6.Mubeena .. Respondents 2to6/Respondents 2to6/Defendant 1to5

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair order and decreetal order dated 09.04.2015 passed in I.A.No.86 of 2015 in O.S.No.244 of 2012 on the file of the II Additional Sub Court, Nagercoil.

For Petitioner : Mr.R.Murugan
For Respondent No.3 : Mr.V.George Raja
For Respondent No.1 : Mr.C.Christopher
For Respondent No.2 : Mr.S.Xavier Rajini
For Respondents 4 to 6 : No Appearance

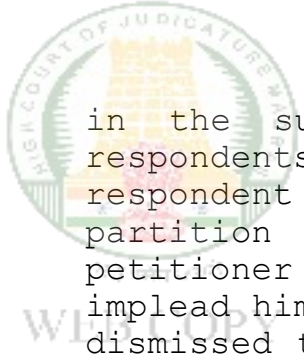
ORDER

Heard the learned counsel on either side.

2.This petition has been filed to set aside the fair order and decreetal order dated 09.04.2015 passed in I.A.No.86 of 2015 in O.S.No.244 of 2012 on the file of the II Additional Sub Court, Nagercoil.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The petitioner is a third party and proposed 6th defendant



in the suit. The first respondent is the plaintiff and the respondents 2 to 6 are the defendants 1 to 5 in the suit. The first respondent has filed a suit in O.S.No.244 of 2012 for a prayer of partition and to allot $\frac{1}{4}$ share to the first respondent. The petitioner herein has filed a petition in I.A.No.86 of 2015 to implead himself as the sixth respondent in the suit. The trial Court dismissed the petition. Against the dismissal order, the petitioner has come forward with the present revision petition.

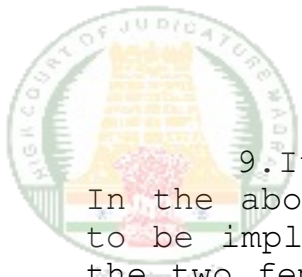
4.The case of the petitioner is that the suit property belonged to one Melia Pillai who is the father of the petitioner. One Sheik Mohammed and the petitioner herein are the sons of the Melia Pillai. Seinam Beevi and Myteen Beevi are the daughters of the Melia Pillai. Among them, except the petitioner others were already dead. The respondents are the legal heirs of the Sheik Mohammed. This petitioner is also having the right over the property.

5.The case of the first respondent is that as per the family settlement already properties are given to the petitioner herein and the petitioner is not having any right over the suit property. This petition was filed at the last stage of the suit. This petition is filed by the petitioner to drag on the proceedings. The second respondent has purchased the property on 04.08.1993 from Sheik Mohammed and is enjoying the property. The petitioner is not having any right over the property for the past two years.

6.On the side of the petitioner, it is stated that the suit property belonged to one Melia Pillai. The petitioners and the first respondent are the sons of Melia Pillai. The second respondent is claiming the property as if he has purchased the property from his own father and there is no such female descendants as per Mohammed Law. The parties are Mohammed and family settlement is not possible.

7.On the side of the respondent, it is stated that in the petition it is stated that there are two daughter to Melia Pillai. The petitioner has not seek permission to implead them also. There was already an oral partition. The petitioner is now residing in the house allotted to him in the oral partition. The suit properties were allotted the share of Sheik Mohammed. The suit is at the stage of arguments and it is requested this petition to be dismissed.

8.Records perused. The suit is filed for partition. Both the parties admitted that the suit properties belonged to grandfather of the first respondent, Melia Pillai. The fact that the petitioner is the son of the Melia Pillai is also admitted. On the side of the respondent, it is stated that the petitioner is residing in the property which was allotted to his share. Whether there is a family settlement for partition also entered between the brothers, whether such oral partition is acceptable under the Mohammed law are to be decided in the case, which is possible only after the completion of



9.It is seen that Melia Pillai was having two daughters also. In the above circumstances, it is necessary that the petitioner is to be impleaded as a party in the suit. The petitioner as well as the two female daughters of Melia Pillai are to be impleaded in the suit and all the properties of Melia Pillai are to be added as the suit properties.

10.With the above directions, this Civil Revision Petition is allowed and the order passed by the lower Court is set aside. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS-III)

Mrn

To

1.The II Additional Sub Court, Nagercoil.

+1cc to Mr.R.Murgan, Advocate in SR No.91328
+1cc to Mr.S.Xavier Rajini, Advocate in SR No.92068
+1cc to Mr.C.Christopher, Advocate in sR no.92053

C.R.P. (PD) (MD)No.1508 of 2015

NM/RP/SAR III/02.11.18/3P/5C.