



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.02.2018
DELIEVRED ON : 10.04.2018

WEB COPY

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

C.R.P (MD) No.2542 of 2017 (PD)
and
CMP (MD) .No.11878 of 2017

G.Arumugam .. Petitioner/Petitioner / Plaintiff

Vs.

1.G.Shanmugam
2.Alagamperumal
3.Muthulaxmi
4.Subbarayalu
5.E.Rajendran
6.Arunachalam Pillai
7.Ramasubramanian
8.M.Jeyaraman

.. Respondents 1 to 8/
Respondents 1 to 8 / Defendants 1 to 8

Mahalingam Chettiar(died)

Devanayagm Pillai(died) .. Respondents 9 & 10 / Defendants 9 & 10

9.Chockalingam Pillai
10.D.Laxmi Kanthan
11.Mariappan

.. Respondents 9 to 11/ Defendants 11 to 13

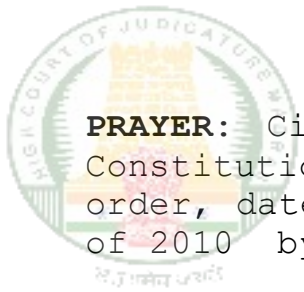
12.Sankaraparvathy
13.Subramanian
14.Santhiya @ Arumugasundari
15.V.Shanmugasundaram
16.V.Vignesh
17.Vinayagasundaram
18.M.Sundarammal
19.Sankaranarayanan
20.Ravi
21.Ramesh

.. Respondents 12 to 21/
Proposed defendants 14 to 23

(R1 to 11 are not the contesting parties and hence, notice are

<https://hcmjpcourt.gov.in/cases/>

(As per the order of this Court, dated 16.02.2018, notice to the respondents 18 to 21 are dispensed with)



PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order, dated 19.06.2017, passed in I.A.No.17 of 2017 in O.S.No.380 of 2010 by the learned Additional Subordinate Court, Tirunelveli.

WEB COPY

For petitioner : Mr.H.Arumugam

For respondents 2 & 3 : Mr.N.Sivakumar

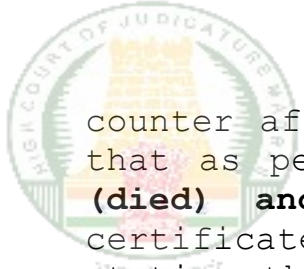
For 13th respondent : No appearance

ORDER

This civil revision petition has been filed as against the order dismissing the petition filed for impleading the respondents 12 to 21 herein as defendants 14 to 23.

2. The revision petitioner / plaintiff has filed the suit for partition. According to the revision petitioner / plaintiff, the suit property originally belonged to his paternal uncle by name Chidambaram Pillai and after his death, his wife Chellammal @ Gomathiammal was in possession and enjoyment of the same. As they have no issues and the said Chellammal @ Gomathiammal died intestate, as per Section 15 of the Hindu Succession Act, the suit property devolved upon two brothers of Chidambaram Pillai by name Subramania Pillai and Ganapathiya Pillai. The revision petitioner / plaintiff and 1st respondent / 1st defendant are the male heirs of Ganapathiya Pillai. According to the revision petitioner / plaintiff, the legal heirs of Subramania Pillai and the female heirs of Ganapathiya Pillai have orally relinquished their right in the suit property in favour of the revision petitioner / plaintiff and the 1st respondent / 1st defendant, and in order to avoid technicalities, he has filed I.A.No.17 of 2017 for impleading the legal heirs of Subramania Pillai and the female heirs of Ganapathiya Pillai as defendants 14 to 23. The 1st respondent / 1st defendant, who is the brother of the revision petitioner / plaintiff and the respondents 2 & 3, who claimed rights based on the registered Will executed by Chellammal @ Gomathiammal, and the defendants 4 to 13, who are tenants of the suit schedule properties, had not filed any counter affidavits before the Court below. The Court below has dismissed the said impleading petition holding that the revision petitioner has not proved the legal heirship of the proposed defendants 14 to 23 by producing legal heirship certificates and death certificates of the above said persons.

3. The learned counsel for the revision petitioner / plaintiff would submit that there is no dispute regarding the death as well as the execution of the Will of legal representatives of parties sought to be impleaded, as the contesting respondents have not filed any



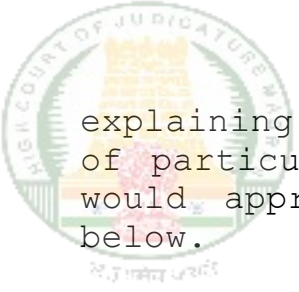
counter affidavit before the Court below. He would further submit that as per the decision reported in **2016 (1) CTC 61 (Amsavalli (died) and others Vs. Sarangabani)**, if the legal heirship certificate is not readily available, parties may file affidavit stating that the persons concerned are the legal representatives of the deceased and by describing how they are legal representatives. The revision petitioner / plaintiff has already filed affidavit mentioning the death and explaining the relationship of the parties and the same is not denied and therefore, there is no necessity to produce the death and legal heir certificate. Thus, he prayed to set aside the order passed by the Court below and to allow this revision petition.

4. The learned counsel appearing for the respondents 2 and 3 would submit that in the plaint, it is averred that the proposed parties already relinquished their shares and hence, they need not be added as parties in the suit. He would further submit that if the revision petitioner / plaintiff wants to prove the fact of relinquishment by the proposed parties, the revision petitioner / plaintiff can very well examine them as witnesses in the suit. Thus, he prayed to dismiss this civil revision petition.

5. Heard the learned counsel for the revision petitioner and the learned counsel appearing for the respondents 2 and 3 and perused the records carefully.

6. Admittedly, there is no objection filed by the respondents disputing the legal heirship of the proposed parties. Even before this Court, the contesting respondents 2 and 3 / defendants 2 and 3 have not disputed the legal heirship of the proposed parties. Though it is stated that the co-owners have relinquished their rights orally in favour of the revision petitioner / plaintiff, they are the necessary parties to be impleaded in the suit for partition and it is for the parties to accept or deny the oral relinquishment.

7. The only ground on which the Court below has dismissed the impleading petition is that the revision petitioner / plaintiff had not produced the death certificate of the co-sharers and their legal heirship certificate for impleading the proposed parties. A learned Single Judge of this Court in the judgment reported in **2016(1) CTC 61 (Amsavalli (died) Vs. Sarangabani)**, has categorically held that if the legal heir certificate is not readily available, the party may file an affidavit that the persons concerned are the legal representatives of the deceased and by describing as to how they are the legal representatives. When there is no dispute with regard to the relationship of the proposed parties, the Court below might have allowed the said revision petitioner / plaintiff to get such an affidavit. Though it is stated by the revision petitioner / plaintiff that he has filed an affidavit



explaining the relationship of the parties, there is some bereft of particulars and therefore, this Court is of the view that it would appropriate to remand back the matter before the Court below.

8. In view of the above, this civil revision petition is allowed and the order impugned in this petition is set aside and the matter is remitted back to the file of the Court below and the revision petitioner / plaintiff is directed to file an affidavit, as indicated in the decision cited supra, before the Court below. On such an affidavit being filed, the Court below may dispose of the impleading petition within a period of two weeks from the date of receipt of such an affidavit from the revision petitioner / plaintiff. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Additional Subordinate Judge,
Tirunelveli.

+ 1 cc TO Mr.H.Arumugam , Advocate in SR No. 60683

gcg

AE/SKN RSK/SAR2/24.04.2018/4P/3C

order made in
C.R.P(MD)No.2542 of 2017
10.04.2018