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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.02.2018

DELIEVRED ON : 10.04.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

C.R.P(MD)No.484 of 2017 (PD)
and
CMP(MD).Nos.2310 of 2017 & 10886 of 2017

Muthusamy .. Petitioner/Petitioner / proposed 3rd
defendant

Vs.

1.Irudayamari .. 1st respondent /Respondent / Plaintiff

2.Savarimuthu@ Xavier

3.Backiam .. Respondents 2 & 3 /Petitioners / Defendants

PRAYER: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, praying to set aside the fair and decreetal order, dated 08.11.2016, passed in I.A.No.359 of 2016 in O.S.No.75 of 2014 by the learned II-Additional District Judge, Trichy.

For petitioner : Mr.Raguavaran Gopalan

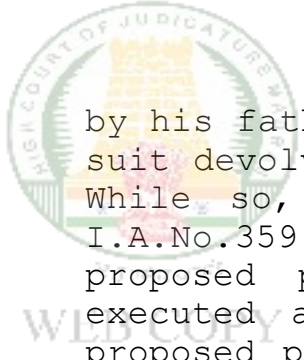
For 1st respondent : Mr.R.Sundar Srinivasan

For respondents 2 & 3 : No appearance

ORDER

This civil revision petition has been filed by the revision petitioner / 3rd party as against the order, dismissing the petition filed by the respondents 2 and 3 herein / defendants for impleading the revision petitioner as a 3rd defendant in the suit.

2. The first respondent / plaintiff has filed the suit in O.S.No.75 of 2014 for partition against his brother and mother viz., the respondents 2 and 3 respectively / defendants. According to the first respondent / plaintiff, the suit property was owned



by his father and he died intestate and the subject matter of the suit devolved upon the plaintiff and the defendants by succession. While so, the respondents 2 and 3 / defendants have filed I.A.No.359 of 2016 seeking to implead the revision petitioner / proposed party as a third defendant stating that they have executed a power deed in favour of the revision petitioner / proposed party and he is selling the suit properties by dividing the same into house sites. The Court below has dismissed the said petition holding that the revision petitioner / proposed party does not have any semblance of right in the suit for partition and without the revision petitioner / proposed party, who is a power agent, the Court can very well decide the right of the parties in the suit for partition. Aggrieved by the said order, the proposed party has filed the present civil revision petition.

3. The learned counsel for the revision petitioner would submit that though the suit is for partition, the only item of property in the suit is the vacant land, which, according to the respondents 2 and 3 / defendants sold to third parties through the revision petitioner and the consideration is shared. He would further submit that the Court below has failed to appreciate the fact that as the revision petitioner alone can speak about the transactions over the suit property, he is a necessary party to be impleaded. Hence, the order passed by the Court below may be set aside and the impleading petition may be allowed. Thus, he prayed to allow this civil revision petition.

4. The learned counsel for the first respondent / plaintiff would submit that the revision petitioner / 3rd party, who is a stranger to the suit and who is not the sharer, has no *locus standi* to enter appearance in the suit for partition as one of the defendants. He would further submit that the revision petitioner / 3rd party in collusion with the respondents 2 and 3 / defendants has filed this civil revision petition, only in order to drag on the proceedings. The Court below has, after an elaborate discussions, dismissed the said impleading petition and the same need not be interfered with. Thus, he prayed to dismiss this civil revision petition.

5. Heard the learned counsel for the revision petitioner and the learned counsel for the first respondent and perused the records carefully.

6. A necessary party is the one without whom no effective decision can be taken by the Court concerned. Admittedly, the revision petitioner is only a power agent of the respondents 2 and 3 / defendants. The first respondent / plaintiff has filed the suit for partition of the suit property by claiming succession. In <https://hcservices.courts.gov.in/hcservices> as a power agent of the respondents 2 and 3 / defendants, has no say and therefore, he is not a necessary party



to be impleaded in the suit. More over, the power deed is not a conveyance. The Court below has rightly dismissed the said application. There is no need to interfere with the order passed by the Court below.

7. In the result, this civil revision petition is dismissed. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1.The II-Additional District Judge, Trichy.

Copy to:

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

- + 1 cc TO Mr.R.Sundar Srinivasan , Advocate in SR No. 60496
- 1 cc TO M/s.U.Nirmala Rani , Advocate in SR No. 60743

gcb
AE/JC/SAR2/25.04.2018/3P/6C

order made in
C.R.P (MD) No.484 of 2017
10.04.2018