



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2018

CORAM:

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THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (NPD) (MD) No.1070 of 2016

1. Selvaraj
2. Jeyaraman

... Petitioners/Respondents 3 & 4
/Proposed Respondents 4 & 5

-vs-

1. Koil Nadar

... 1st Respondent/Petitioner
/Petitioner/2nd Defendant

Chellammal (Died)

2. John Selvaperumal

3. John Christopher Rajadurai ... Respondent 2 & 3/Respondents 1 & 2
/ Proposed Respondents 2 & 3

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the order dated 25.01.2016 made in I.A.No.1226 of 2012 in I.A No.146 of 2007 in O.S.No.190 of 1996 on the file of the District Munsif-cum- Judicial Magistrate, Cheranmahadevi, Tirunelveli District.

For Petitioners : Mr.J.Parekhkumar

For Respondents : No Appearance

O R D E R

The plaintiff had filed O.S.No.190 of 1996 for declaration, permanent injunction, etc. and the said suit was decreed exparte on 19.11.2002. On an earlier occasion, the suit was dismissed for default on 07.06.2000, which was subsequently, restored on 06.09.2002. After passing the exparte decree, the plaintiff had expired and therefore, the 2nd defendant filed an application in I.A.No.1226 of 2012 in I.A No.146 of 2007 in O.S.No.190 of 1996 before the learned District Munsif-cum-Judicial Magistrate, Cheranmahadevi, Tirunelveli for impleading the legal representatives (numbering 4) of the plaintiff. The Trial Court had allowed the petition in part by impleading two persons, namely, John Selvaperumal and John Christopher Rajadurai as legalheirs of the plaintiff and refused to implead the revision petitioners as legalheirs of the plaintiff. Challenging the same, the revision petitioners are before this Court.

2. It is the case of the revision petitioners that the deceased Chellammal / plaintiff had bequeathed the suit properties to the



petitioners herein under a registered Will dated 30.09.1992 and as such, they are alone the legal representatives of the original plaintiff Chellammal. However, the Trial Court, without considering the said aspect, has simply refused to add them as parties to the suit. It is the further case of the petitioners that since the revision petitioners are in possession and enjoyment of the suit properties, the Trial Court ought to have added the petitioners as parties

3. The revision petitioners state that as per CPC, if there is any dispute arisen with regard to the legal representatives of a deceased person, such question has to be allowed to be contested before the Court by adducing oral and documentary evidence. Moreover, the order passed in I.A No.146 of 2007 is not a speaking order, which itself is against the ruling of this Court. Contending that the point raised before the Court below has not been considered in proper perspective and the erroneous and casual approach vitiates the entire order, it is prayed that the order of the Trial Court is liable to be set aside.

4. Heard the learned counsel for the petitioner and also perused the material documents available on record. There is no representation for the respondents

5. The 2nd defendant in the suit filed an application before the Trial Court under Order 22 Rule 4 r/w Section 151 CPC, seeking permission to implead the legal representatives of the plaintiff, including the petitioners herein as parties to the suit and finding prima facie material in support of his claim, the Trial Court has partly allowed the said application, thereby dismissed the same in respect of the revision petitioners herein. A close scrutiny of the entire records would show that the 1st petitioner had previously filed an application in I.A.No.358 of 2014 for condoning the delay in filing documents, which was allowed by the Trial Court on 18.06.2014, making it clear that the reception of documents was subject to proof and relevancy. Though the petitioners have duly produced the unregistered Will dated 30.09.1992 in support of their claim of legal heirship, it is unknown as to how the Trial Court has disallowed the application in respect of the petitioners alone, as there is no finding for singling out them.

6. It is one of the principles of the administration of justice that justice should not only be done, but it should be seen to be done. Since the revision petitioners could be able to prove that they are one of the legal heirs of the deceased plaintiff in the suit, which fact is borne out by records, they are also covered by the decree rendered in the suit. Therefore, the order of the Trial Court in refusing to accept the revision petitioners as the legal representatives of the deceased plaintiff has no legs to stand and is liable to be set aside.

7. In the result,

a) this civil revision petition is allowed and the order dated



25.01.2016 passed in I.A.No.1226 of 2012 in I.A No.146 of 2007 in O.S.No.190 of 1996 by the learned District Munsif-cum-Judicial Magistrate, Cheranmahadevi, Tirunelveli District, is hereby set aside. No costs.

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sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The District Munsif-cum- Judicial Magistrate,
Cheranmahadevi,
Tirunelveli District.

+1 CC to Mr.J.PAREKH KUMAR, Advocate in SR.No.69201

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RJ/RSK/SAR-1/13/07/2018 - 3P/3C

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