



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 18.01.2018  
(Reserved on 04.12.2017)

CORAM :

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

C.R.P (MD) No.1712 of 2016

A.Thavamani

... Petitioner/Petitioner/  
Impleading Party

**vs.**

1.Daivanaiammal

2.Satheeshkumar

... 1&2 Respondents/ 1&2 Respondents/  
Plaintiffs

3.M.Rajendran

4.Dhanalakshmi

5.Saranya

... 3 to 5 Respondents/3 to 5 Respondents/  
Defendants

Civil Revision Petition is filed, under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.227 of 2016 in O.S.No.70 of 2011 on the file of the V Additional District Judge, Madurai, dated 18.04.2016.

|                       |   |                       |
|-----------------------|---|-----------------------|
| For Petitioner        | : | Mr.C. Vakeeswaran     |
| For Respondents 1 & 2 | : | Mr.P.T.S.Naredravasan |
| For Respondents 3 & 4 | : | Mr.B.Ramasubramanian  |

R5 Given up vide Court order dated 26.09.2016

### **ORDER**

This Civil Revision Petition is filed against the fair and decreetal order passed in I.A.No.227 of 2016 in O.S.No.70 of 2011 on the file of the V Additional District Judge, Madurai, dated 18.04.2016.

2.The facts of the case are as follows:-

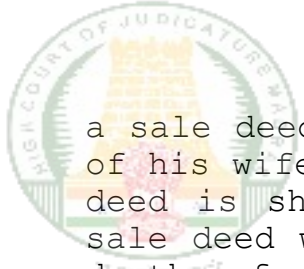
The respondents 1 and 2 herein are the plaintiffs in O.S.No.70 of 2011 on the file of the V Additional District Court, Madurai and they have filed a suit for declaration to declare the sale deeds dated 09.04.2010 and 29.07.2005 as null and void and to declare the plaintiffs and third defendant as absolute owners of the suit properties and also for permanent injunction. The revision petitioner herein filed I.A.No.227 of 2016 to implead himself as a party in the suit in O.S.No.70 of 2011 and the same was dismissed by the learned Judge by impugned order dated 18.04.2016, against which, the petitioner has filed the present revision petition.



3. Learned counsel appearing for the petitioner would submit that the petitioner has filed I.A.No.227 of 2016 on the ground that the suit properties and some other properties originally belonged to one Karuppannan and the said Karuppannan had four sons viz., Mari, Karuppan, Nagan and Alagan @ Alagu. The said Alagan @ Alagu had three sons viz., Chandran, petitioner and Murugesan. The petitioner's elder brother viz., Chandran died on 28.11.1992 leaving behind the respondents 1, 2 and 5. The suit property belonged to one Murugesan who is the brother of the petitioner. The said Murugesan died on 12.10.2008 leaving the petitioner alone as Class II legal heir. It is further submitted that suppressing all the facts, the respondents 1 and 2 have filed the above said suit and also alleged that the deceased Murugesan had executed an unregistered Will dated 16.01.2007 and therefore, the petitioner has filed the impleading application stating that he was not arrayed as defendant in the said suit, but the said application was dismissed on 18.04.2016, holding that the petitioner is not a necessary party and he can file the suit for establishing his right separately.

4. Learned counsel for the petitioner further contended that though the respondents 1 and 2 have claimed the entire suit properties of the deceased Murugesan by way of declaration, the petitioner alone is the Class II heir of the deceased Murugesan and hence, he is a necessary and proper party in the above suit. It is further submitted that the unregistered Will dated 16.01.2007 is a forged one and the petitioner is the only surviving Class II heir of the deceased Murugesan and the plaintiffs are not Class II heirs of the deceased Murugesan. It is also contended that if the suit is decreed without impleading the petitioner, his rights will be affected.

5. Learned counsel appearing for the respondents 1 and 2 would submit that the suit properties are ancestral properties and one Karuppannan was the owner of the properties. He further contended that that Karuppannan's first son Mari had one son by name, Rajendran, first defendant. Rajendran's wife Dhanalakshmi is the second defendant and Karuppannan's, 4<sup>th</sup> son Alagan @ Alagu had three sons viz., Chandran, Thavamani and Murugesan respectively. On 28.11.1992 Chandran died intestate leaving behind the respondents 1 and 2 /plaintiffs and third defendant and they are wife, son and daughter respectively. The first plaintiff and second defendant are own sisters. Murugesan is the brother of first plaintiff's husband Chandran and he was a heart patient maintained by Chandran's family and the first plaintiff and Murugesan believing first defendant had executed a general power deed on 31.07.1999 appointing first defendant as their power agent. On 16.01.2007 Murugesan executed a Will bequeathing his properties in favour of the second plaintiff. On 12.10.2008 Murugesan died. On 06.03.2010 plaintiffs started construction of five shops in first item of the suit property and on 05.09.2010 construction was completed and shops were leased out to the tenants. On 09.04.2010, first defendant as Power Agent executed



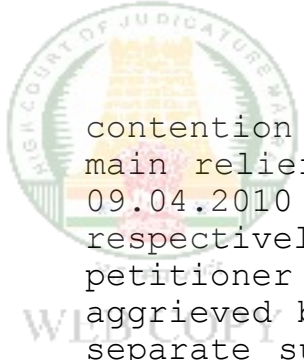
a sale deed in respect of first item of the suit property in favour of his wife/second defendant. It is further contended that the sale deed is sham and nominal and it is an invalid document since the sale deed was executed by the Power Agent/first defendant after the death of Principal Murugesan. Therefore, the first plaintiff cancelled the registered power deed dated 31.07.1999 on 25.10.2010. On 14.12.2010, a legal notice was issued to the defendants 1 and 2 and during April 2011, the plaintiffs came to know another sale deed dated 29.07.2005 was executed by first defendant in favour of second defendant in respect of second item of the suit property.

6.Learned counsel appearing for the respondents 1 and 2 would submit that the revision petitioner has filed impleading petition in I.A.No.227 of 2016 only with an ulterior motive after commencement of trial and when the main relief sought for in the suit is to declare that the sale deed dated 09.04.2010 and 29.07.2005 as null and void, the petitioner is not a necessary party. He further contended that if the petitioner is aggrieved by the Will executed by his brother Murugesan, he has to file a separate suit questioning the validity and genuineness of the Will by way of separate suit and not in the present suit and prayed for dismissal of this Civil Revision Petition.

7.Heard the learned counsel for the petitioner as well as the respondents and perused the materials on record.

8.The prayer in the suit is to declare the sale deed dated 09.04.2010 executed by the 1<sup>st</sup> defendant in favour of 2<sup>nd</sup> defendant as power agent of the 1<sup>st</sup> plaintiff and deceased Murugesan in respect of first item as null and void. The said Murugesan died on 12.10.2008. In the impleading petition, it is stated that Murugesan has never executed will in favour of the second plaintiff and the execution of the will was denied. The contention of the petitioner is that if the will is proved to be void as class I heir of said Murugesan, the petitioner will be entitled to a share in the property, as he is the sole surviving class II legal heir. The simple point which arises for consideration is whether the learned Judge was right in dismissing the impleading petition filed by the petitioner.

9.Perusal of the records shows that after commencement of trial, one Thavamani who is the brother of the deceased Chandran and Murugesan filed I.A.No.227 of 2016 to implead himself as defendant in the suit and the respondents through their counter have stated that since the petitioner has filed impleading petition belatedly and the impleading petitioner is very close relative of the parties knowing fully well that the suit is pending for five years has come forward to implead at that stage. The case of the impleading petitioner is that he is II class heir and he alone is entitled to the property of the deceased who died without any issues. It is the further case of the petitioner that his brother Murugesan did not execute any will and the Court below without accepting the above



contention of the petitioner dismissed the impleading petition. The main relief sought for in the suit to declare the sale deeds dated 09.04.2010 and 29.07.2005 is in respect of first and second item respectively as null and void and for the above prayer, the petitioner is not a necessary party. If at all the petitioner is aggrieved by the will, the petitioner is always at liberty to file separate suit questioning the validity and genuineness of the will by way of separate proceedings. It appears that the present impleading petition has been filed that too after a period of five years only to stall the proceedings. The order passed in the suit will not affect the petitioner's right, if any. Therefore, the impugned order of the learned Judge does not warrant any interference.

Hence, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

**To**

The V Additional District Judge,  
Madurai.

**Copy To:-**

The Record Keeper,  
V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai. (2 Copies)

+ 1 CC TO Mr.C.VAKEESWARAN, ADVOCATE IN SR No. 42741  
+ 1 CC TO Mr.PT.S.NARENDRAVASAN, ADVOCATE IN SR No. 42899

BALA

TE/MR/SAR-2 : 01/02/2018 : 4P/6C

C.R.P (MD) No.1712 of 2016  
18.01.2018