



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.04.2018

Pronounced on : 22.06.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.2617 of 2016

and

CMP (MD) No.12324 of 2016

V.Muthu Veera Surili Ammal

.. Petitioner

vs

1.Somasundaram

2.Viswanatha Pandian

3.Kamaraja Pandian

4. The Tahsildar,
Peraiyur Taluk,
Madurai District.

5. The District Collector,
Madurai.

.. Respondents

Prayer: Civil Revision is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 01.11.2016 passed in I.A.No.464 of 2016 in O.S.No.66 of 2016 on the file of the learned District Munsif-cum-Judicial Magistrate, Peraiyur.

For Petitioner : Mr.S.Lakshmanan

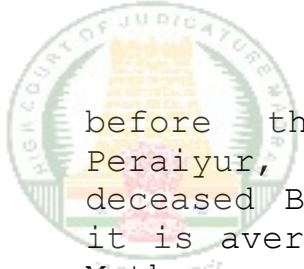
For Respondents : Mr.M.V.Venkataseshan

for R1 to R3

Mr.Aayiram K.Selvakumar

Additional Government Pleader
(for R4 and R5)

ORDER

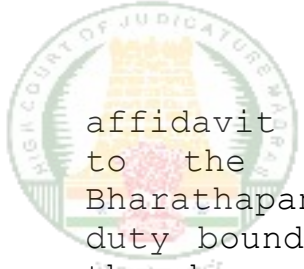


before the learned District Munsif-cum-Judicial Magistrate, Peraiyur, for declaration that she is the sole legal heir of the deceased Bharathapandian, who died on 15.04.2016. In the plaint, it is averred that Bharathapandian had got married to Sellammal @ Muthunagammal. Sellammal, however, passed away on 04.02.1994. The couple had no issues. Besides the petitioner, another sister Meena @ Surelilingammal died on 03.07.1995. After the death of Bharathapandian on 15.04.2016, she has succeeded him as his sole legal heir. She, therefore, approached the 4th respondent Tahsildar for the issuance of a legal heirship certificate. The 1st respondent vide a letter dated 06.05.2016 rejected the claim and directed the petitioner to approach the Civil Court for necessary reliefs. Thereafter, the petitioner filed a suit in O.S.No.66 of 2016 before the learned District Munsif-cum-Judicial Magistrate, Peraiyur seeking for the relief of declaration that she is the sole legal heir of the deceased Bharathapandian

2. Pending suit, the respondents 1 to 3 claiming to be the legal heirs of the deceased Bharathapandian filed an application in I.A.No.464 of 2016 to implead themselves as parties in O.S.No.66 of 2016. The Court below, vide an order dated 01.11.2016, has allowed the application and ordered the impleadment of the respondents 1 to 3. Aggrieved by the same, the petitioner/plaintiff is now before this Court.

3. In the affidavit filed in support of I.A.No.464 of 2016, the respondents 1 to 3 have averred that the revision petitioner is the only sister of the deceased Bharathapandian. It is claimed that in the Zamin system, only the male legal heirs who inherit property and accordingly, the respondents 1 to 3 should succeed to the properties of late Bharathapandian. The respondents 1 to 3 claim to have instituted a suit for partition, the details of which have not been spelt out in the affidavit. The affidavit is completely bereft of any details as to how the respondents 1 to 3 are related to the deceased Bharathapandian. Paragraph-3 of the affidavit in I.A.No.464 of 2016 is completely silent on the relationship of the respondents 1 to 3 with the deceased Bharathapandian. Furthermore, the respondents 1 to 3 have not produced any document to show their relationship with the deceased Bharathapandian. These facts appear to have been brought to the notice of the trial Court by the revision petitioner in her counter affidavit.

4. Unfortunately, the trial Court has passed a cryptic order allowing the application on the ground that whether the parties are legal heirs are not can only be looked into after trial. The approach of the trial Court is manifestly erroneous, as it displays complete non-application of mind. The trial Court appears to have overlooked the fact that I.A.No.464 of 2016 was filed by the respondents 1 to 3 claiming themselves to be the legal heirs of the deceased Bharathapandian. As indicated supra, even the



affidavit filed in support of the petition is completely vague as to the relationship of these persons with the deceased Bharathapandian. At the very least, the respondents 1 to 3 were duty bound to clearly plead and disclose their relationship with the deceased Bharathapandian in their affidavit filed in support of I.A.No.464 of 2016. As this has not been done, the Court below has acted illegally in allowing the application and ordering impleadment.

5.The Hon'ble Goa Bench of the Bombay High Court in *Gonsalo De Filomena Luis, etc. v. Inacio Piedade Hildeberte Fernandes and others*, reported in AIR 1977 Goa 4, has considered the parameters for exercise of jurisdiction under Order 1 Rule 10 and as held as under:

"3.The question for my determination is, whether "the Intervenor" was a proper or necessary party to the present Suit. The law on the subject can be formulated from the decisions in *Firm of Mahadeva Rice and Oil Mills v. Chennimalai Gounder*, AIR 1968 Mad 287; *Banarsi Dass Durga Prashad v. Panna Lal Ram Richhpal Oswal*, AIR 1969 Punj. & Har 57 - 1892 (1) Ch.487, Foll. & AIR 1958 A.P. 195, Ref. (sic). The principles governing the powers of the Court under Order 1, Rule 10 of C.P.C. are: As a rule the Court should not add a person as a defendant in a suit when the plaintiff is opposed to such addition. The reason is that the plaintiff is the "dominus litis". He cannot be compelled to fight against a person against whom he does not wish to fight and against whom he does not claim any relief. The word 'may' in sub-rule (2) imports a discretion, the Courts will invariably take into account the wishes of the plaintiff before adding a third person as a defendant to his Suit. Under sub-para (2) of Order 1, Rule 10, a person may be added as a party to a Suit in two cases only, i.e., when he ought to have been joined and is not so joined, i.e. when he is a necessary party, or, when without his presence the questions in the Suit cannot be completely decided. There is no jurisdiction to add a party in any other case merely because that would save a third person the expense and botheration of a separate Suit for seeking adjudication of a collateral matter, which was not directly and substantively in issue in the Suit into which he seeks intrusion. A person may not be added as a defendant merely because he would be incidentally affected by the judgment. The following tests may be formulated usefully as a guidance in the case of adding of parties, under Order 1, Rule 10, C.P.C. (1) If, for the adjudication of the "real controversy" between the parties on record, the presence of a third party is necessary, then he can be impleaded; (2) It is imperative to note that by such impleading of the proposed parties, all the questions in controversy arising in the Suit and all issues arising thereunder may be finally determined and set at rest, thereby avoiding multiplicity of Suits over a subject-matter



which could still have been decided in the pending Suit itself; (3) The proposed party must have a defined, subsisting, direct and substantive interest in the litigation which interest is either legal or equitable and which right is cognisable in law; (4) Meticulous care should be taken to avoid the adding of a party when the addition is intended merely as a ruse to ventilate certain other grievances of one or the other of the parties on record which is neither necessary or expedient to be considered by the Court in the pending litigation; and (5) It should always be remembered that considerable prejudice would be caused to the opposite party when irrelevant matters are allowed to be considered by Courts by adding a new party whose interest has no nexus to the subject-matter of the Suit."

6.The respondents 1 to 3 have miserably failed to meet the aforesaid tests, with the result that the impleadment ordered by the trial Court is liable to be set aside.

7.The Court below has reasoned that the revision petitioner has not denied that the respondents 1 to 3 are the male legal heirs to the deceased Bharathapandian. This finding is clearly perverse as the revision petitioner has clearly denied the alleged relationship of the deceased Bharathapandian with the respondents 1 to 3 in paragraph-3 of her counter affidavit. The respondents 1 to 3 were, therefore, duty bound to disclose their relationship for the purposes of showing a defined, direct or subsisting interest in the subject matter of the suit. Impleadment cannot be ordered for the asking on the basis of vague allegations without any material particulars. On their own showing, the application for amendment ought to have been dismissed.

8.It is settled law in civil cases that the plaintiff is the dominus litus of the litigation and that she cannot be compelled to fight persons against whom she does not claim any relief. In this case, as pointed out above, the respondents 1 to 3 have not been able to spell out, let alone produce any supporting material, to show that their relationship with the deceased Bharathapandian. The Court below has ordered impleadment by taking it for granted that the respondents 1 to 3 are the male legal heirs of the deceased Bharathapandian. Resultantly, the finding rendered by the trial Court appears to have been done on non-existent material and purely on the basis of surmises. As the Court below has exercised jurisdiction with material irregularity in allowing I.A.No.464 of 2016 under Order 1 Rule 10, the revision petitioner has made out a case for interference.

9.In the result:

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

(a) this Civil Revision Petition is allowed by setting aside the fair and decreetal order dated 01.11.2016 passed in



I.A.No.464 of 2016 in O.S.No.66 of 2016, by the learned District Munsif-cum-Judicial Magistrate, Peraiyur;

(b) the trial Court is directed to take up the suit in O.S.No.66 of 2016, on day to day basis without giving any adjournments to either parties and to dispose the same within a period of one month from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

The District Munsif-cum-Judicial Magistrate,
Peraiyur.

+ 1 cc TO Mr.S.Lakshmanan , Advocate in SR No. 69467
+ 1 cc TO Mr.M.V.Venkateseshan , Advocate in SR No. 69325
+ 1 cc TO The Special Government Pleader in SR No. 69609

vsv

AE/SKN RSK/SAR1/25.06.2018/5P/5C

order made in
C.R.P. (MD) (PD) No.2617 of 2016
and
CMP (MD) No.12324 of 2016
22.06.2018