



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 18.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
C.R.P. (MD) No.2022 of 2018
and
C.M.P. (MD) .No.8955 of 2018

1.M.Alagappan
M.Annamalai (died)
2.M.Ramanathan
3.M.Murugappan
4.Meenakshi Achi
5.Visalachi @ Shanthi
6.Valliammal @ Priya .. Petitioners/
Respondents 1,3 to7/Defendants

vs.

1.Sivagami @ Ahila .. 1st Respondent/
Petitioner/Plaintiff
2.Venkatachalam @ Somasundaram Chettiar
3.Valliammai .. Respondents 2 &3 / Respondents 8 & 9 /
Third parties

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order in I.A.No.116 of 2018 in O.S.No.54 of 2012 on the file of the Sub Court, Devakottai dated 28.06.2018.

For Petitioners : Mr.T.Antony Arul Raj
For Respondents : Mr.P.Saravanakumar
for M/s.Kalaiyarasi Bharathi

ORDER

The first respondent herein filed O.S.No.54 of 2012 on the file of the Sub Court, Devakottai seeking the relief of partition. The revision petitioners are defendants in the said suit. In para No.4 of the written statement, the revision petitioners stated that the plaintiff is having a sister by name Umaiyal and that the said fact has been deliberately suppressed. The plaintiff filed a replication claiming that for more than 19 years, the whereabouts of the said Umaiyal are not known. Issue was also framed in this regard as to whether the suit is hit by non-joinder of necessary parties. Trial had also commenced. The plaintiff appears to have made some admissions during the course of her cross-examination. Therefore, the plaintiff filed I.A.No.116 of 2018 for impleading the legal heirs of the said Umaiyal. The Court below, by order dated 28.06.2018 allowed the said IA. Questioning the same, this Civil Revision Petition has been filed.



2. Heard the learned counsel on either side.

3. The contention raised by the learned counsel for the revision petitioners/defendants is that Section 107 of the Indian Evidence Act would come into play. Section 107 of the Indian Evidence Act reads that when the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that the person is dead is on the person who affirms it. In the present case, admittedly the said Umaiyal was very much alive within 30 years. Therefore, without establishing that she is dead, the question of bringing the legal heirs on record will not arise.

4. Though the submission carries considerable weight, the case on hand is rather peculiar. Admittedly, the said Umaiyal has not been heard for 7 years. If the revision petitioners assert that she is alive then, the burden to show that she is still alive is on the revision petitioners. That would be the effect of Section 108 of the Indian Evidence Act. Therefore, if Section 107 of the Indian Evidence Act is invoked, it would go against the plaintiff and as far as the present application is concerned, if Section 108 of the Indian Evidence Act is invoked, that would go against the revision petitioners.

5. Such a situation has been rather invited by the revision petitioners themselves. The revision petitioners had taken the plea that non-impleading the said Umaiyal, the sister of the plaintiff would affect the suit as she is also a necessary party. Since such a specific plea was taken, an issue was also framed. In order to overcome the said impediment, the plaintiff has filed the present application for impleading the husband and daughter of the said Umaiyal. Since as of now, both the parties have not discharged respective the burden cast on them in terms of Sections 107 and 108 of the Indian Evidence Act, this Court would vacate the finding that they are the legal representatives of the said Umaiyal. They are allowed to be impleaded not as LRs of the said Umaiyal but as persons, who can shed some light on the said issue as to whether the said Umaiyal is alive or dead. The order impugned in the Civil Revision Petition is sustained for the reason that it is the only way that the plea of non-joinder of necessary party taken by the revision petitioners can be overcome by the plaintiff.

6. With these observations, the order impugned in the Civil Revision Petition is sustained and this Civil Revision Petition is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/



To

The Sub Judge,
Devakottai.

- 1 CC TO Mr.T.Antony Arul Raj, ADVOCATE IN SR No. 84875.
- + 1 CC TO M/s.Kalaiyarasi Bharathi, ADVOCATE IN SR No.84672.
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- DS SKN SAR3 02 11 2018 3P 4C

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