



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.02.2018

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

CRP(MD).Nos.1424 of 2011 (PD) and 1838 of 2012(NPD) and
M.P(MD).No.1 of 2011 in CRP(MD).No.1424 of 2011 and
M.P(MD).No. 1 of 2012 in CRP(MD).No.1838 of 2012

CRP(MD).No.1424 of 2011

Rajappa

: Petitioner

Vs.

1.Panchalai

2.Annasami

3.Ramamoorthi

4.Gopu

5.Sabeetha

6.Devika

7.Minor Aravindh

rep. by mother and guardian Devika

8.Subbulakshmi

9.Rajeswari

: Respondents

(No relief is claimed against Respondents 3 & 4 in the above revision as they were set exparty before the Trial Court.)

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.410 of 2010 in O.S.No.149 of 1986 on the file of the District Munsif Court, Pattukkottai, dated 21.03.2011.

CRP(MD).No.1838 of 2012

1.A.Rajappan

2.Savitha

3.Subbulakshmi

4.Minor Aravindh

rep. by mother and guardian Devika

5.Rajeswari

: Petitioners

Vs.

Panchalai

: Respondent

Prayer: This Civil Revision Petition is filed under Section 115 of C.P.C. to set aside the fair and decreetal order passed in I.A.No.357 of 2010 in O.S.No.149 of 1986, dated 27.07.2012, on the file of District Munsif Court, Pattukkottai.



For petitioners

: Mr. H. Arumugam in both C.R.Ps.

COMMON ORDER

These Civil Revision Petitions have been preferred against the fair and decreetal order passed in I.A.Nos.410 of 2010 and 357 of 2010 in O.S.No.149 of 1986, on the file of District Munsif Court, Pattukkottai, dated 21.03.2011 and 27.07.2012 respectively.

2. The interlocutory Application in I.A.No.410 of 2010 was filed by the first respondent / plaintiff to appoint an Advocate Commissioner for the purpose of allotting 3/4th share of her property, as per the Preliminary Decree and to pass Final Decree, for which, a counter statement has been filed by the respondents stating that during the pendency of the proceedings before the Hon'ble Supreme Court of India, the defendant viz., Mangalathammal died on 14.10.2005, and subsequently, Legal heirs of the defendant were impleaded and the appeal was after contest dismissed by the Hon'ble Supreme Court. According to the respondents, though the Legal heirs of the defendant were impleaded in the appeal, the petitioner has to file an application under Order 22 Rule 4 of CPC and the suit has to be amended and then only, an Advocate Commissioner could be appointed.

3. The Court below after perusing the date of death of the defendant and also status of the case has given a finding that already the Legal heirs of Mangalathammal are added as parties and the delay in bringing them on record as Legal Heirs are also permitted in I.A.No.1 of 2009 before the Hon'ble Supreme Court and hence, once again, another application for the same relief need not be filed, since the appeal is a continuation of the suit. It is also observed that already Legal heirs of the defendant Mangalathammal have been brought on record in the proceedings before the Hon'ble Supreme Court and therefore, once again they need not be added as Legal heirs in the final decree application and simply it can be amended in the said application. In view of the amendment made in the Supreme Court applications, the same can be adopted and no prejudice would be caused to the proceeding in final decree. This Court does find any infirmity or illegality in the order passed by the Court below.

4. Further, I.A.No.357 of 2010 was filed to implead the "B" schedule property mentioned in the petition for partition. As rightly held by the Court below, the original defendant has not taken any steps to implead the petition mentioned "B" schedule property, persons who are brought on record as a legal representatives of the deceased defendant cannot be set up a new plea other than the one pleaded by the original defendant. The Court below has rightly rejected the plea of the petitioners and hence, this Court does not any reason to interfere with the order passed by the Court below.



5. In view of the above, these Civil Revision Petitions are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(RTI)

/TRUE COPY/

Sub Assistant Registrar

To

The District Munsif Court, Pattukkottai,

TRP

MV:RSK-SKN:SAR4:23/05/2018/3P/2C

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