



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.06.2018

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THE HONOURABLE MR. JUSTICE S.S.SUNDAR

CRP(PD) (MD) .No.2390 of 2013
and M.P. (MD) Nos. 1 of 2013 and 1 of 2014

V.Gunapandian ... Petitioner/Petitioner/3rd Party

Vs.

1.Vijay Krishnakumar
2.J.Sujitha Rajeshwari ... Respondents 1 & 2/Respondents 1 & 2/
Plaintiffs

3.Jeyavelu
4.Velmurugandi
5.Ramaraj ... Respondents 3 to 5/Respondents 3 to 5/
Defendants 1 to 3

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decreetal order dated 10.10.2011 passed in IA.No.511 of 2009 in O.S.No.96 of 2009 on the file of the Subordinate Judge, Tuticorin.

For Petitioner : Mr.S.Subbiah
Senior Counsel
for Mr.N.Subramanian
For R1 to R3 : No appearance
For R4 & R5 : Mr.G.Prabhu Rajadurai

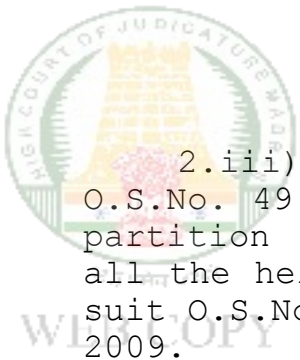
O R D E R

This Civil Revision Petition is filed by the third party to the suit in O.S.No.96 of 2009 on the file of the Subordinate Court, Tuticorin.

2. The brief facts that are necessary for the disposal of the revision are as follows:

2.i) The respondents 1 and 2 herein have filed the suit in O.S.No.96 of 2009 on the file of the Subordinate Court, Tuticorin for partition of 2/3 share in the suit property and for consequential relief.

2.ii) The suit for partition was filed by the respondents 1 to 2 as the son and daughter of the first defendant who is admittedly the son of one Vanniya Nadar. The main issue that arise for consideration in the suit is whether the suit property is the self acquired property of the first defendant or the joint family property of the children of Vanniya Nadar.



2.iii) The revision petitioner has filed another suit in O.S.No. 49 of 2009 on the file of the District Court, Tuticorin for partition of his 7/36 share and for consequential reliefs against all the heirs of Vanniya Nadar including the first defendant in the suit O.S.No.49 of 2009, who is the fourth defendant in O.S. No.96 of 2009.

2.iv) The lower court dismissed the application filed by the revision petitioner to implead him as a party in O.S.No.96 of 2009 on the ground that the revision petitioner has not produced any document to prove his claim.

3. It is not necessary at this stage to any one to prove his right before impleading himself as a party to the proceedings. The claim of the petitioner, who is seeking to implead himself as a party is prima facie established by reading of the plaint in O.S.No.96 of 2009. The court can implead him as a party without deciding the right, title and interest at this stage, as an opportunity should be given to the party to prove his case. Further by impleading the petitioner, conflicting views in different proceedings can be avoided.

4. In the present case, it is brought to the notice of this Court that in the suit filed by the revision petitioner the property which is subject matter of O.S.No.96 of 2009 is also included as an item in the suit property. It is also brought to the notice of this court that the plaintiffs and defendants in O.S.No.96 of 2009 are also the parties in the suit filed by the revision petitioner.

5. In such circumstances, to avoid multiplicity of proceedings, the presence of the revision petitioner is necessary and the revision petitioner is a proper party for effective adjudication of the issues that arise for consideration in the suit. In that view of the matter, this Civil Revision petition is allowed.

6. The order passed by the trial court dismissing the application filed by the revision petitioner to implead him as a party to the proceedings is erroneous and liable to be set aside. Accordingly, the order passed in I.A.No.511 of 2009 in O.S.No. 96 of 2009 by the Subordinate Judge, Tuticorin is set aside.

7. Further, the suit in O.S.No.96 of 2009 is pending before the Subcourt, Tuticorin. This Court has already seen that the suit in O.S.No.96 of 2009 on the file of the Sub Court and the suit in O.S.No.49 of 2009 on the file of the District Court, Tuticorin are connected and there is identity of parties and properties in both suits. The suit for partition filed by the revision petitioner is comprehensive. Therefore, both the suits can be tried together and hence, the suit in O.S.No.96 of 2009 on the file of the Subcourt, Tuticorin is directed to be withdrawn from the file of the Sub Court, Tuticorin and transfer to the file of the District Court, Tuticorin to be tried along with O.S.No.49 of 2009.



8. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petitions in M.P. (MD) No.1 of 2013 and M.P.(MD) No. 1 of 2014 are closed.

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Sd/-

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

1. The Subordinate Judge, Tuticorin.

2. The District Court, Tuticorin.

+1cc to Mr.G.Prabhu Rajadurai, Advocate, SR.No.67820.

+1cc to Mr.N.Subramanian, Advocate, SR.No.67521.

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