

C.M.P.No.8958 of 2019

in

S.A.No.737 of 2001

P.RAJAMANICKAM.J.,

This petition has been filed by the third parties to implead themselves as respondents 5 and 6 in the above Second Appeal.

2.Heard Mr.L.S.M.Hasan Fizal, the learned counsel for the petitioners and Mr.V.P.Sengottuvel, the learned counsel for the 1st respondent.

3.The learned counsel appearing for the petitioners has submitted that the 1st respondent herein had filed a suit in O.S.No.436 of 1993 on the file of the Sub-Judge, Namakkal to divide the suit property into two equal shares and allot one such share to her. He further submitted that the learned Sub-Judge, Namakkal, by the judgment dated 27.02.1998, passed a preliminary decree for partition as prayed for, as against which, the defendant therein had filed an Appeal in A.S.No.78 of 1999 on the file of the Principal District Judge, Salem. He further submitted that the learned Principal District Judge, Salem, by the judgment dated 17.09.1999, had partly allowed the appeal and modified the judgment and decree passed by the Trial Court to the effect that the plaintiff is entitled to get 1/5th share in the suit property. He further

<http://www.judis.nic.in> submitted that aggrieved by the same, the plaintiff has filed the present Second Appeal and during pendency of the Second Appeal, the sole

respondent/defendant died and hence, the appellant has filed CMP.No.22061 of 2017 to implead the legal representatives of the deceased defendant as respondents 2 to 4 and the same was allowed. He further submitted that the defendant married the 1st petitioner herein as second wife after getting divorce with the first wife and hence, the 1st petitioner is also to be impleaded as legal representative. He further submitted that the 2nd petitioner was born to the 1st petitioner through the deceased defendant and hence, she is also a legal heir, but, the petitioners herein have not been impleaded as legal representatives of the sole respondent/defendant and therefore, he prayed to allow the petition.

4.Per Contra, the learned counsel appearing for the 1st respondent/plaintiff has submitted that the 1st petitioner is not a legally wedded wife of the deceased defendant and hence, she is not entitled to participate in the partition suit, which has been filed by the 1st respondent against her father. He further submitted that the 2nd petitioner was already impleaded as 2nd respondent, but, her name has been mentioned as D.Srimathi instead of Kalaiselvi Dhanabal and therefore, she requests to substitute the 2nd respondent by the 2nd petitioner. He further submitted that in so far as the 1st petitioner is concerned, since she is not a legally wedded wife, she is not entitled for any share in the suit property and therefore, he strongly opposed the petition to implead the 1st petitioner as a party.

5.The question as to whether the 1st petitioner is a legally wedded wife or not will have to be decided at the time of disposing of the Second Appeal. At this stage, if any view is expressed by this Court with regard to status of the 1st petitioner that may affect the rights of the parties. Therefore, this Court is of the view that the 1st petitioner can be permitted to participate in this proceedings without deciding the question as to whether she is a legally wedded wife or not. Merely, because she is permitted to participate in the proceedings, it does not mean that she is entitled to get any share unless she independently proves that she is a legally wedded wife. Therefore, in the interest of justice, this Court is inclined to allow this petition.

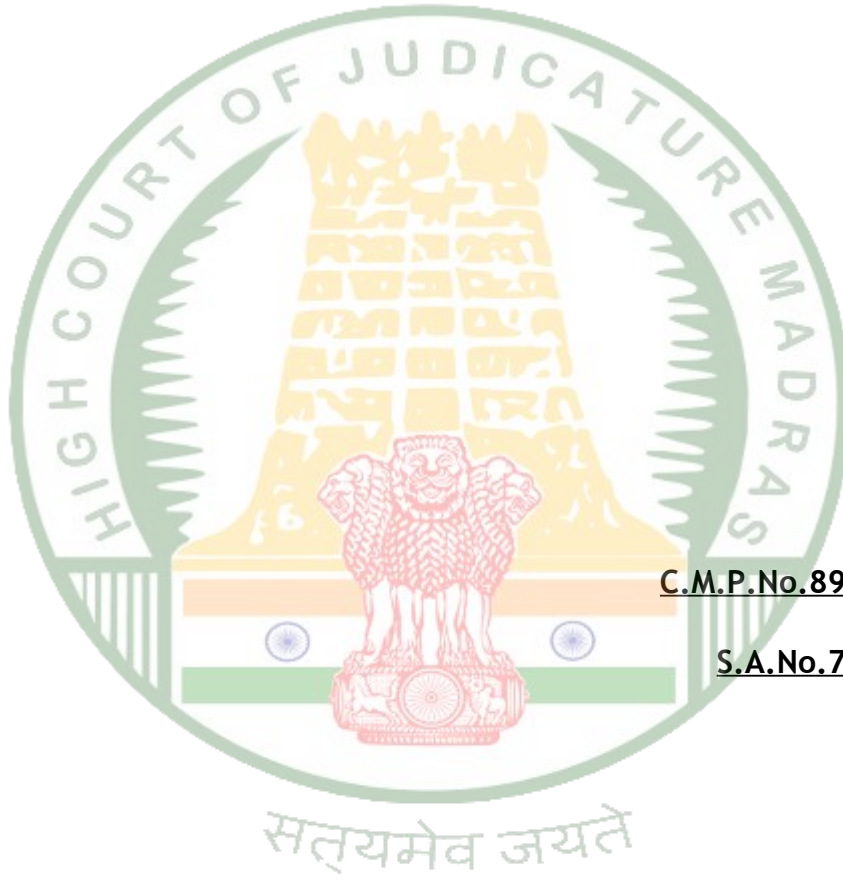
6.In the result, this petition is allowed. The petitioners are permitted to participate in the Second Appeal. Since, the 2nd petitioner was already impleaded as 2nd respondent in the name of D.Srimathi, the Registry is directed to delete the name of D.Srimathi and in her place, insert the 2nd petitioner's name and address. Registry is directed to carry out necessary amendment in the appeal memorandum.

22.04.2019

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