

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.02.2019

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(PD)No.1142 of 2013 and
M.P.No.1 of 2013

1.Manickam
2.Jayalakshmi

..

Petitioners

versus

1.Munian
2.Lakshmi
3.Saroja
4.Chinnaponnu
5.Sithammal

..

Respondents

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 06.12.2012 made in I.A.No.252 of 2012 in O.S.No.169 of 2007 on the file of the learned II Additional Subordinate Judge, Salem.

For Petitioners

: M/s.J.Prithivi

for Mr.S.Kaithamalai Kumaran

For Respondent Nos.1 & 5 : Mr.V.Sekar

For Respondent No.2 to 4 : No Appearance

ORDER

This Civil Revision Petition has been preferred against the order dated 06.12.2012 made in I.A.No.252 of 2012 in O.S.No.169 of 2007 on the file of the learned II Additional Subordinate Judge, Salem.

2. The Interlocutory Application in I.A.No.252 of 2012 was filed by the revision petitioners, under Order 1 Rule 10(2) of the Code of Civil Procedure, seeking an order to implead the first defendant's wife, namely, Sithammal, as the fifth defendant in the suit.

3. The learned counsel appearing for the revision petitioners submitted that the suit property is a joint family property, which was allotted by their father to the parties herein. He further submitted that the allegation contained in paragraph 15 of the written statement filed by the first defendant to the effect that the third item of the suit property stands in the name of his wife, who has purchased the same in the year 1980 from the third party. Hence, the revision petitioners filed the above said application to implead the first defendant's wife in the suit. Without considering the same, the trial Court has dismissed the said application.

4. Aggrieved over the above said order dated 06.12.2012, the revision petitioners are before this Court with the present Civil Revision Petition.

5. Heard the learned counsel on either side and perused the materials available on record.

6. It is seen in the written statement that the first defendant himself took the plea that the third item of the suit property stands in the name of his wife, who has purchased the same in the year 1980 from the third party and accordingly, the petitioners have filed the application to implead her in the suit. The Court below has not assigned any valid reason for dismissing the Interlocutory Application. It cannot be denied that impleading the first defendant's wife will not prejudice the rights of the contesting parties to the suit. Hence, the first defendant's wife is the necessary and proper party to be impleaded in the suit for proper adjudication. In such circumstances, I am of the view that the impugned order passed by the Court below, dismissing the Interlocutory Application is not according to law. Hence, this Court is of the view that the Revision has to be allowed and the impugned order, dated 06.12.2012 has to be set aside.

7. In the result, this Civil Revision Petition is allowed and the impugned order passed by the Court below is set aside. The revision petitioners shall take steps to amend the plaint before the trial Court, within a period of two weeks from the date of receipt of a copy of this order. The trial Court shall serve notice to the newly impleaded party, receive a written statement and thereafter, proceed the case and conclude the trial, as expeditiously as possible. Consequently, connected miscellaneous petition is closed. However, there is no order as to costs.

12.02.2019

Speaking Order/Non Speaking Order

Index : Yes / No

Internet : Yes

sri

सत्यमेव जयते

WEB COPY

To

The II Additional Subordinate Judge,
Salem.



WEB COPY

N.SATHISH KUMAR, J.,

sri



C.R.P.(PD)No.1142 of 2013
and M.P.No.1 of 2013

WEB COPY

12.02.2019