

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P. (PD)No.4745 of 2013

S. Suresh Kumar

..Petitioner/1st Respondent/Plaintiff

Vs.

1.S.Savithiri

..Respondent 1/Petitioner/3rd Party

2.Periyasamy @ Annakodi

3.Pappayammal

4.Palanisamy

5.Karuppanasamy @ Appu

6.Rukkumani

7.Minor.Sivakumar

..Respondents 2 to 7/Respondents 2 to 7/
Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 10.09.2013 made in I.A.No.385 of 2013 in O.S.No.318 of 2011 on the file of the II Additional Sub Court, Erode.

For Petitioner : Mr. M. Guruprasad

For Respondents : No appearance [for R1]
Ex-parte [R2 to R7]

ORDER

This Revision Petition has been filed against the impleading of third party as one of the Defendants. It is admitted fact that the proposed party who are impleaded is none other than own sister of the Plaintiff. Suit has been filed based on the Gift Deed said to have been executed by Grandfather of the Plaintiff. Therefore he sought partition of the property. In the original suit the proposed party has not been impleaded. Whereas they have taken an application to implead the third party as one of the defendants on the ground that she is also share in their grandfather property. Therefore, unless she is impleaded as a party her rights will be affected. The trial court considered the contentions of the both sides and allowed the impleading application filed by the third party.

2. Heard the learned counsel for the Revision Petitioner. The main contention of the Revision Petitioner is that the Gift Deed was executed by maternal grandfather, therefore, she cannot claim any share in the property. The trial Court has not taken into consideration of all those facts and simply allowed the application. Since the Plaintiff is *dominus litis* he has to decide which of the Defendant is necessary and against whom the decree is sought. Hence submitted that the

order of the trial Court has to be interfered.

3. I have perused the order of the trial Court. The proposed party is none other than the sister of First Respondent. The suit has been laid for partition only on the ground that the property has been gifted by the grandfather in the year 2008. Whether the suit property come from the maternal side or whether the proposed parties have any share in the property is the matter for evidence and the same cannot be decided at the stage of Interlocutory Application. Though the Plaintiff is *dominus litis*, in the suit for partition, all the parties are necessary to be impleaded to avoid partial partition. Therefore, this Court does not find any illegality or infirmity in the order passed by the trial court to implead the third party Defendant.

4. Accordingly, the revision filed by the Revision Petitioner is dismissed. No costs.

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N.SATHISH KUMAR, J.

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