

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (NPD) No. 3728 of 2018

and

C.M.P. No. 20793 of 2018

R. Seenuvasan ... Petitioner

-Vs-

1. Devagi Ammal

2. Jayaraman ... Respondents

Prayer : Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 10.01.2018 made in I.A. No. 42 of 2017 in A.S. No. 13 of 2016 on the file of the Subordinate Judge, Gingee.

For Petitioner : Mr. M. Venkadeshan

For Respondents : Mr. V. Bhiman

ORDER

This Civil Revision Petition has been filed against the fair and decretal order passed in I.A. No. 42 of 2017 in A.S. No. 13 of 2016 on the file of the Subordinate Judge, Gingee, by order dated 10.01.2018.

2. Actually before the trial Court, two suits were laid by the revision petitioner Seenuvasan, one suit is for seeking declaration of a Will executed by one Varadharaja Pillai as valid and the other suit is to declare the suit property by virtue of Will is enjoyable by the plaintiff. Both suits were decreed by the trial Court, as against which, both Devagi Ammal and Jayaraman preferred two appeal suits i.e., A.S. No. 12 of 2015 and A.S. No. 13 of 2016.

3. During the pendency of the appeal suits, the said Devagi Ammal died. In this context, it is the strong case of the revision petitioner that, since the said Devagi Ammal is the paternal aunt of the revision petitioner and her husband Varadharaja Pillai pre-deceased and there had been no issues for Devagi Ammal and Varadharaja Pillai, except her second class heir like the revision petitioner, there is no other surviving direct heirs for the said Devagi Ammal.

4. In that circumstances, the present I.A. No. 42 of 2017 had been filed before the First Appellate Court in the said A.S. No. 13 of 2016 under Order VI Rule 17 of Civil Procedure Code to seek

amendment in the grounds of appeal, which according to the respondents herein, had become necessitated in view of the sudden death of Devagi Ammal.

5. The said application was allowed by the First Appellate Court and the amendment sought for in the grounds were allowed to be carried out. Thus, aggrieved over the said order allowing the said application in I.A. No. 42 of 2017, the revision petitioner preferred the present revision petition.

6. The learned counsel appearing for the revision petitioner would submit that, the moment Devagi Ammal dies, leaving no direct legal heirs as admittedly she had no issues, the petitioner and other similar people i.e., the second class heir had to be impleaded as legal heirs of Devagi Ammal and according to the revision petitioner, since there has been no legal heirs for the Devagi Ammal except the revision petitioner, the attempt now made by the respondents especially the second respondent Jayaraman, who is none other than the subsequent purchaser of the suit property, during the pendency of the first suit

filed by the revision petitioner seeking declaration of the Will executed by Varadharaja Pillai husband of Devagi Ammal, by which, the revision petitioner claimed to be the beneficiary as null and void, is an unjustifiable move which should not be allowed.

7. The learned counsel appearing for the respondents i.e., the second respondent / Jayaraman, Mr. V. Bhiman submits that, the very Will sought to be declared as valid, as has been decreed by the Court below i.e., trial Court, itself, is a fraudulent Will and in this context, evidence were adduced before the trial Court during the life time of Devagi Ammal and in support of the Will subsequently made by her, to and in favour of the second respondent Jayaraman, evidence also were adduced and without considering those evidence, since both suits were decreed by the trial Court, aggrieved over the same, originally both Devagi Ammal and Jayaraman filed these two appeal suits, where during the pendency of the appeals, since the said Devagi Ammal died, it become necessitated to file the present application for amendment, which is a natural consequence and allowing the said petition cannot be found fault with.

8. I have considered the said submissions made by both sides and perused the materials placed before this Court.

9. It is a fact that Devagi Ammal is no more, who was the main contesting party in both suits and the right to inherit now claimed by the revision petitioner emanates only from the Devagi Ammal, but according to the revision petitioner, she got life estate of the suit property from her husband through the Will and despite the said right of life interest, since the Devagi Ammal sold the property to and in favour of the second respondent Jayaraman, the subsequent sale was also questioned and both suits are decreed against which present appeals are pending.

10. Even though Devagi Ammal died during the pendency of the appeal, the subsequent purchaser the second respondent Jayaraman has stepped into the shoes of the suit property, as he claimed to be the bonafide purchaser of the suit property, he can very well contest the appeal suits filed by them, as he was party to the original suit also.

Therefore the issue between the second respondent who was the second appellant in the suit and the revision petitioner who was the sole respondent in the suit can very well be decided on merits by the First Appellate Court.

11. In the meanwhile, if at all the revision petitioner feels that, the deceased Devagi Ammal was not having any direct legal heirs except the second class heir like the revision petitioner, it is for him to establish the same by filing an appropriate petition before the First Appellate Court and if he is able to succeed in his attempt, a natural corollary would be followed.

12. For the said purpose, he could not expect that the First Appellate Court would do the best in favour of the revision petitioner to implead the second class legal heir of Devagi Ammal as party to the appeal suits in the application filed by the second respondent herein, who is no way connected with the issue of legal heirs.

13. Therefore, this Court feels that, absolutely there is no infirmity in the said order passed by the First Appellate Court, which is impugned herein and hence the said order does not require any interference in this revision.

14. Resultantly, this Civil Revision Petition fails and therefore it is liable to be dismissed, accordingly it is dismissed. While dismissing the same, it is observed that, it is open to the revision petitioner to approach the First Appellate Court by proper and appropriate petition to implead the legal heirs of the deceased Devagi Ammal in the manner known to law. Consequently, connected Miscellaneous Petition is also closed. No costs.

31.10.2019

Index: Yes / No

Speaking order / Non speaking order

vji

To

The learned Subordinate Judge,
Gingee.

7/8

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