



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.11.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

C.R.P. (PD) (MD) No.1365 of 2012

and M.P.No.2 of 2012

Chinthamani Achi (Died)	... 1 st respondent/1 st plaintiff
1.Muthiah	... Petitioner/2 nd plaintiff
2.A.Natarajan	
3.A.Sivanantham	... Petitioners/Defendants
	1 & 2
4.A.Sivagami	... Petitioner/3 rd defendant
5.A.Vallikannu	
6.A.Kalaiselvi	... Petitioners/defendants
	4 & 5

-vs-

1.Valliyammal (died)

2.Chidambaram ... Respondents
(R2 is brought on record as LR of deceased
sole respondent vide order dated 18.10.2019
made in M.P.Nos.1 and 2 of 20115)

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 14.12.2011 made in I.A.No.701/2011 in I.A.No.107/2010 in O.S.No.139/1993 on the file of the Sub Court, Pudukottai.

For Petitioners : Mr.S.Srinivasaraghavan

For Respondents No.2 : Mr.G.Prabhu Rajadurai

O R D E R

This Civil Revision Petition has been filed challenging the fair and final order passed by the Court below allowing the application filed by the respondent to implead herself as a party in the final decree proceedings in I.A.No.701/2011 in O.S.No.139/1993.

2.The petitioner/second plaintiff had filed a suit along with one Chinthamani Achi against Natarajan and six others seeking for the relief of partition and allotment of $\frac{1}{2}$ share in the property. The suit was dismissed by the Sub Court, Pudukottai by judgment and decree dated 04.12.2003. Aggrieved by the same, an appeal was filed in A.S.No.90/2004 before the Principal District Court, Pudukottai.



3. The Principal District Court, Pudukottai, by judgment and decree dated 20.12.2006 passed a preliminary decree in favour of the plaintiffs and thereby the plaintiffs were entitled for $\frac{1}{2}$ share in the suit property. Thereafter, a final decree petition was filed before the Sub Court, Pudukottai in I.A.No.107/2010 and based on the compromise between the parties, a final decree was passed.

4. The respondent was originally the 6th defendant in the suit. She filed an application to implead herself in the final decree proceedings on the ground that a compromise has been arrived at between the parties without making her a party in the final decree proceedings.

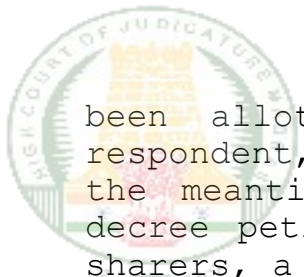
5. The Court below has allowed the petition by fair and final order dated 14.12.2011 on the ground that the respondent/6th defendant is a necessary party in the final decree proceedings. Aggrieved by the same, the present Civil Revision Petition has been filed.

6. Mr.S.Srinivasaraghavan, learned counsel for the petitioner/second plaintiff, submitted that the respondent took a specific stand to the effect that a second appeal has been filed before this Court against the judgment and decree passed in A.S.No.90/2004. However, there was absolutely no proof for filing any such appeal and till the respondent is given any share in the property by reversing the judgment and decree passed in the appeal, the respondent will have no say in the entire proceedings and therefore, the respondent is neither a necessary nor a proper party in the final decree proceedings.

7. Per contra, the learned counsel appearing on behalf of the respondent submitted that the plaintiffs have attempted to get an order behind the back of the respondent on the ground of compromise between the parties. The respondent has already filed a second appeal before this Court and the same is pending at the SR stage in S.A.SR.No.7289/2008 and therefore, the plaintiff ought to have made the respondent as a party to the proceedings and the Court below has rightly held that the respondent is a necessary party in the final decree proceedings. Therefore, the learned counsel concluded his argument by submitting that there is no ground to interfere with the fair and final order passed by the Court below.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. The only issue that requires consideration in this Civil Revision Petition is as to whether any purpose will be served in impleading the respondent in the final decree proceedings. It is true that the respondent was originally the 6th defendant in the suit. However, by virtue of the judgment passed in A.S.No.90/2004



been allotted any share in the property. According to the respondent, a second appeal has been filed before this Court. In the meantime, the plaintiffs have gone ahead and filed a final decree petition and based on the compromise between the other co-sharers, a final decree has also been passed.

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10. Unless and otherwise the judgment and decree passed in A.S.No.90/2004 is reversed and the respondent is given any share in the property, the respondent cannot be said to be a necessary or proper party in the final decree proceedings. Even if the respondent is made a party in the final decree proceedings, no share is going to be allotted to the respondent. Therefore, the respondent will be a party in the final decree proceedings only to just complete a formality without any useful purpose. The Court below did not take into consideration this important aspect and has proceeded to implead the respondent on a hyper-technical ground. The Court below has forgotten the rudimentary law of impleading a party, wherein, it has to be tested whether the party, who seeks to implead, is a necessary or a proper party. If a party does not satisfy this requirement, a Court need not implead such a party. In the present case, this respondent will become a necessary or proper party only if she gets any share in the property. For that purpose, the judgment and decree passed in A.S.No.90/2004 has to be modified or set aside and admittedly, it has not happened till date.

11. In view of the above discussion, this Court is of the considered view that the fair and final order passed by the Court below in I.A.No.701/2001 dated 14.12.2011 requires interference. It goes without saying that as and when any orders are passed in the second appeal in favour of the 6th respondent, it will always be open to the 6th respondent to work out her remedy at that point of time.

12. In the result, the fair and final order passed by the Court below in I.A.No.701/2011, is hereby set aside and accordingly, the Civil Revision Petition is allowed. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

Sub Assistant Registrar(CS)

RR



C.R.P. (MD) No.1365 of 2012

N.ANAND VENKATESH, J.
RR

To
The Sub Judge,
Pudukottai.

+1CC TO MR.G.PRABHU RAJADURAI, Advocate Sr. No.95698
+1CC TO MR.S.SRINIVASA RAGHAVAN, Advocate Sr. No. 95641

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