



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:20.11.2019

CORAM:

THE HONOURABLE **MR.JUSTICE N.ANAND VENKATESH**

CRP. (MD) .No.2070 of 2012 (PD)

and

M.P. (MD) .No. 1 of 2012

1.K.Azhagarsamy

2.A.Anburaj

...Petitioners/Respondents 1 & 2/
Defendants

Vs.

1.Bajilathunissa

2.Beevijan

3.Altab Hussain

4.Ayisha Beevi

5.Silshath @ Thilsathbegum

6.Mohammed Thayoob

(Respondents 1 to 5 are represented
by C.A.Asraf Ali)

7.C.A.Mohammed Haneef

8.A.A.Samsath Begum

9.M.J.Hajeera Begum

10.C.A.Jaheera

11.Fathima Beevi @ Fathima Begum ...Respondents/Respondents/
Proposed Plaintiffs 7 to 11

PRAYER: This Petition filed under Article 227 of the Constitution of India to set aside the order passed in I.A.No.825 of 2011 in O.S.No.391 of 2010 dated 09.07.2012, pending on the file of the Sub Court, Palani.

For Petitioners : Mr.S.C.Herold Singh

For R-1 to R-7

R-9 to R-11

: Mr.D.Selvaraj

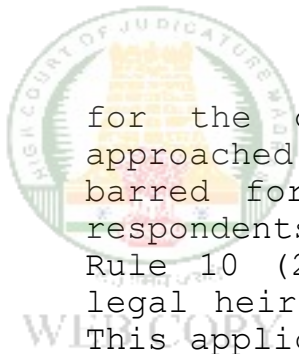
For R-8

: No Appearance

ORDER

This Civil Revision Petition has been filed challenging the fair and final order passed by the Court below allowing the application filed by the respondents 1 to 6 / plaintiffs under Order 1 Rule 10 (2) of the Code of Civil Procedure to implead the plaintiffs 7 to 11 in the suit.

2. The respondents 1 to 6 / plaintiffs filed a suit for bare injunction against the petitioners. The petitioners filed a written statement and in the written statement they have specifically taken a plea that totally there are nine legal heirs



for the deceased Mohammed Haneef and only six of them have approached the Court and filed the suit and therefore, the Suit is barred for non-joinder of parties. Immediately thereafter, the respondents 1 to 6 / plaintiffs filed an application under Order 1 Rule 10 (2) of the Code of Civil Procedure to implead the other legal heirs of the deceased Mohammed Haneef as plaintiffs 7 to 11. This application was allowed by the Court below and aggrieved by the same, the present Civil Revision Petition has been filed before this Court.

3. Mr.S.C.Herold Singh, learned counsel, appearing on behalf of the petitioners submitted that the petitioners have already filed a written statement stating that they are in possession and enjoyment of the property and that the application itself was filed only to get over the defence taken by the petitioners to the effect that the suit is barred for non-joinder of parties. The learned counsel submitted that the same counsel, who appeared for the plaintiffs 1 to 6 has also appeared for the proposed plaintiffs 7 to 11 in the suit. The learned counsel concluded his arguments by submitting that the application itself has been filed only to fill up the lacuna. Therefore, the order passed by the Court below is liable to be set aside.

4. The learned counsel appearing on behalf of the respondents / plaintiffs submitted that the application itself came to be filed only to avoid any technical objections that may arise in future for not impleading the legal heirs of the deceased Mohammed Haneef. The learned counsel submitted that the original plaintiffs themselves could have prosecuted the suit and the application was filed only on abundant caution. He further submitted that no prejudice will be caused to the petitioners, even if the proposed plaintiffs 7 to 11 are brought in as parties to the proceedings.

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

6. The plea of non-joinder of parties may not be fatal in every civil suit. It is always possible for some of the co-owners to defend the rights of all the co-owners concerned. The non impleadment of the legal heirs will become an issue only in a suit for partition, where the suit itself will become not maintainable in view of the fact that the shares in the property cannot be allotted to all the legal heirs. However in a suit for injunction even a co-owner can file a suit in order to defend the rights of all the owners.

7. In the present case, the co-owners of the property have filed a suit against the petitioners seeking for permanent injunction. Since the petitioners have raised a plea of non-joinder of parties, the application was filed for impleading the proposed



plaintiffs 7 to 11. The same has been allowed by the court below. There is no illegality or infirmity in the order passed by the Court below and no prejudice is going to be caused to the petitioners even if the proposed plaintiffs 7 to 11 are brought on record.

8. In the result, the Civil Revision Petition is dismissed and the Court below is directed to complete the proceedings in O.S.No.391 of 2010, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

tsg

To

1.The Subordinate Judge, Palani.

2.The Record Keeper,V.R.Section

Madurai Bench of Madras High Court,Madurai.

+1 CC to M/s.S. SARVAGAN PRABHU, Advocate (SR-100010[F] dated 21/11/2019)

SMA/11/12/19/3P/5C

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