



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.03.2019

CORAM :

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CRP(MD) No.405 of 2019

and

C.M.P. (MD) No.2031 of 2019

Thangamani ... Petitioner/Petitioner/Proposed 9th defendant/third party

vs.

1.Johnson ... first respondent/first respondent/plaintiff

2.S.P.Spining Mills,
represented through its,
Managing Director,
No.34, Arunachalam Asari Street,
Register Office,
Salem Town,
Salem District.

3.Dhanaraj

4.David Ravi. ... Respondents 2 to 4/Respondents 2 to 4
/Defendants 1 to 3
Welingdon (Died)

5.Sekar

6.Selvarani

7.Ponnammal

8.Premier Polytronics Ltd.,
Represented through its
Managing Director,
No.185, A.T.T. Street,
Race Course,
Coimbatore. ... Respondents 5 to 8/Respondents 6 to 9

/Defendants 5 to 8

PRAYER:- Civil Revision Petition filed the under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 12.12.2018 made in I.A.No.628 of 2018 in O.S.No.187 of 2010 on the file of the Additional District Munsif Court, Valliyoor.

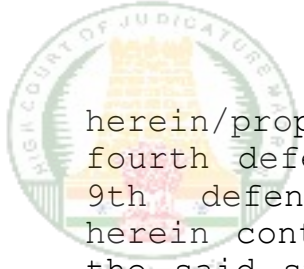
For Petitioner : Mr.A.Arumugam

For Responden NO.2 :Mr.S.Palani Velayutham

ORDER

This Civil Revision Petition has been filed to set aside the order 12.12.2018 passed in I.A.No.628 of 2018 in O.S.No.187 of 2010 by the Additional District Munsif Court, Valliyoor.

2.I.A.No.628 of 2018 was filed by the petitioner



herein/proposed 9th defendant, who is the wife of the deceased fourth defendant namely, Velingdon seeking for her to be added as 9th defendant in the suit in O.S.No.187 of 2010. The petitioner herein contended that she has been impleaded as necessary party in the said suit. The respondents herein have established that there were lot of amended plaints filed and in the said amendment plaints, there was no petition filed by the petitioner herein to implead her as necessary party and even in the 5 additional written statements, no steps have been taken by the petitioner herein to implead herself as legal heirs of the 4th defendant.

3.The trial Court observed that the suit in O.S.No.187 of 2010 was filed by the first respondent herein/plaintiff for partition and during the pendency of the suit, the fourth defendant died and after his death, number of amendment petitions have been filed and number of counter statements were also filed and thereafter, the said case was posted for judgment. At this juncture, the petitioner herein claimed herself as the wife of the deceased fourth respondent and she has to be impleaded as necessary party. Further, the trial Court observed that the petitioner herein has not filed any death certificate for the death of the said deceased and hence, the petitioner did not contain any bona fide or any genuineness regarding the fact that she is the wife of the said deceased.

4.It is contended by the learned counsel for the petitioner herein that the petitioner herein never stated in the additional written statements regarding the legal heirs of the said deceased and whether she has any right in the suit property. It is also observed that the said deceased sold the property to the defendants 1 and 8 and the petitioner herein has not stated whether the said deceased has any child and whether she has filed any death certificate of the said deceased.

5.The trial Court further observed that there is no certificate filed for the death of the said deceased and only the name has been stated by the petitioner herein in the interim application and when the said application was addressed by where the petitioner herein is residing now, the same is not mentioned. Hence, in the absence of any legal heir certificate or any death certificate of the said deceased, the petitioner has not filed anything before the trial Court and further, in the said case, so many amendments of the proceedings noted at a very later period though it was filed in the year 2010. The petitioner herein, after a very long time filed a petition to implead herself as legal heir of the said deceased fourth respondent. In the absence of any such relevant document, the trial Court dismissed the said petition.

6.It is argued by the learned counsel for the petitioner herein by quoting Order VIII Rule 5 of CPC and the same is as follows:

<https://hcservices.ecourts.gov.in/hcservices/>

5. Specific denial :-

(1) every allegation of fact in the plaint, if not denied



specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability;

provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

(2) where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved;

(3) in exercising its discretion under the proviso to sub-rule (1) or under the sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader;

(4) whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced;

7.Considering the facts and circumstances of the case and on hearing the learned counsel for the petitioner, it is seen that the case has already reached the final stage and after crossing so many amendments and written statements, the petitioner herein only at the last stage, filed the petition without any proof regarding her relief as prayed for. Further, it is the contention of the petitioner herein that unless the Court requires, the petitioner need not file any such document.

8.Hence, the relief sought for the petitioner has rightly considered by the trial Court, which does not warrant any interference of this Court. Accordingly, this Civil Revision Petition is dismissed. The learned Additional District Munsif, Valliyoor, is directed to dispose of the suit in O.S.No.187 of 2010 within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

The Additional District Munsif,
Valliyoor.

+1cc to Mr.S.Palani Velayutham, Advocate, SR.No.51496

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