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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 11.03.2019

DELIVERED ON : 16.04.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No.1035 of 2015

and

M.P. (MD) No.1 of 2015

Kolappan

.. Petitioner

Vs.

1. Mohideen Kunju
Thiraviyam Panicker (Died)
Ramasamy Panickar (Died)
Valliyammal (Died)
2. Suseela
3. Azhakamma @ Rajamma
Pankajam (Died)
4. Subhalekshmi
5. Vijaya
6. Krishna Panicker
Mohammed Vousi (Died)
7. Mohammed Pathummal Beevi
8. Amir Sukara Beevi
9. Sabiya Beevi
Sivagurunathan Panicker (Died)
Meenakshi (Died)
Daivanai (Died)
Ponnayyan (Died)
10. Janardhanan
11. Rethinam
12. Krishna Raj
Thayamma (Died)
13. Marimuthu
14. Sooriyakumari
15. Stalin
16. Manikantan

.. Respondents

Prayer: This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 17.03.2015 passed in I.A.No.42 of 2014 in O.S.No.454 of 1966 on the file of the learned II Additional District Munsif, Kuzhithurai.



For Petitioner

: Mrs.J.Anandhavalli

For 1st Respondent: Ms.Jessi Jeeva Priya
For Mr.G.Aravinthan

For Respondents 2 to 16

: Dispensed with

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ORDER

Heard Mrs.J.Anandhavalli, learned counsel appearing for the petitioner and Ms.Jessi Jeeva Priya, learned counsel appearing for the first respondent.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.42 of 2014 in O.S.No.454 of 1966 dated 17.03.2015 on the file of the learned II Additional District Munsif, Kuzhithurai.

3.The petitioner herein is the 24th respondent, the first respondent herein is the petitioner, the respondents 2 to 6 herein are the respondents 4, 5, 7 to 9, the respondents 7 to 9 herein are the respondents 11 to 13, the respondents 10 to 12 herein are the respondents 18 to 20 and the respondents 13 to 16 herein are the respondents 22, 23, 25, 26 in I.A.No.42 of 2014.

4.One Thiraviam Panickar and Ramaswamy Panickar have filed a suit in O.S.No.454 of 1966 against the defendants 1 to 4 who are the daughter of Mohammed and against one Sivagurunathan, Meenakshi and Daivani. The plaintiffs and the defendants 1, 5 and 7 expired and their legal heirs are the parties in this petition. The respondents 7 to 9 are the defendants 2 to 4 in the suit. The suit in O.S.No.454 of 1966 was filed for partition and for allotment of 4/9th share to the plaintiffs. The trial Court has passed a preliminary decree. Against the decree passed in that suit, an appeal was made in S.A.No.1812 of 2003 wherein this Court has decided that the plaintiffs were entitled for 3/9th share and the defendants 2 to 4 are jointly entitled to 3/9th share. I.A.No.99 of 1996 was filed for passing supplementary preliminary decree and the trial Court dismissed the petition and the appeal in A.S.No.63 of 1997 was filed and the final decree application was closed and in the second appeal in S.A.No.1812 of 2003, this Court has directed the parties to work out their remedy by filing a petition for final decree. Accordingly, I.A.No.185 of 2013 is filed before the District Munsif Court, Kuzhithurai. The first respondent filed I.A.No.42 of 2014 in I.A.No.185 of 2013 to record himself as the legal heir of deceased respondents 5 and 9. I.A.No.42 of 2014 was allowed by the trial Court. Against the order, the petitioner has filed this revision petition.

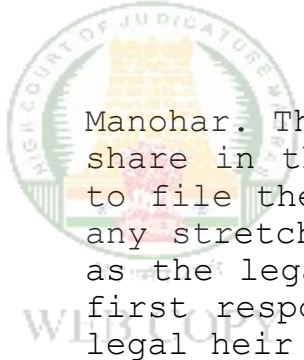


5. On the side of the petitioner, it is stated that I.A.No.42 of 2014 was filed by the first respondent to declare him as the legal heir of respondents 5 and 9. O.S.No.454 of 1966 was filed for partition and for allotment of 4/9th share in 22 cents and the preliminary decree was confirmed in appeal. The first respondent claimed to have purchased the 4/9th share allotted to the plaintiffs from one Suseela, daughter of Thiraviam Panickar and that he has filed a petition for final decree. The claim of the first respondent is that since he has purchased the share of respondents 5 and 9, he has to be impleaded as the legal heir of the respondents 5 and 9.

6. On the side of the petitioner, it is further stated that the respondents 5 and 9 are the legal heirs of the second defendant and they are impleaded on 17.03.2015 and the vendor of the first respondent is one Suseela who is the only legal heir of the first plaintiff not the legal heir of the second plaintiff and that the petitioner has stated that they purchased 4/9th share from one Suseela but the said Suseela is the legal heir of the first plaintiff who is entitled only for 2/9th share. The petition was filed under Order 22 Rule 2 of C.P.C., and the prayer of the first respondent is to implead himself as the testator or legal representative of the second plaintiff. When the first plaintiff alone has executed the sale deed, the first plaintiff cannot have purchased the share of the second plaintiff and that the third plaintiff executed a sale deed in favour of one Manohar. The first respondent cannot claim himself as the testator as well as the legal heir right simultaneously and he is not the legal heir of the second respondent and that 3/9th share of the property belonged to defendants 2 to 4 and that the implead petition was allowed by the trial Court only for the reason that the petitioner failed to file counter in the petition.

7. On the side of the first respondent, it is stated that the petitioner has no locus standi to file the petition. Both Thiraviam Panickar and Ramaswamy Panickar got 4/9th share in the property and that the petitioner has not challenged the preliminary decree passed in O.S.No.454 of 1966. On the side of the first respondent, it is further stated that the respondent purchased the property and the sale was not questioned by any of the plaintiffs. The trial Court decree was not questioned and it is made final. For the share of the first respondent only, they filed the petition and that the first respondent is the legal heir in the capacity of subsequent purchaser and quoting a wrong section will not change rights of the first respondent.

8. On the side of the petitioner, it is stated that the first respondent subsequently filed I.A.No.366 of 2014 for impleading himself as the legal heir of deceased and that petition was dismissed. The petitioner has filed counter in I.A. Petition stating that the first respondent is having no right over the 4/9th share and that the legal heir of Ramaswamy executed sale deed in favour of



Manohar. The vendor of the first respondent is entitled only to 2/9th share in the property and the first respondent has no locus standi to file the petition and Manohar is not impleaded as a party and at any stretch of imagination, the first respondent cannot be recorded as the legal heir of deceased Ramaswamy. There is no right for the first respondent to step into the shoes of Ramaswamy Panicker. The legal heir of the deceased respondents 5 and 9 are not on record and prayed the petition to be allowed.

9.It is seen that there is partition suit between Thiraviam Panickar and Ramaswamy Panickar and others. In that suit, a preliminary decree was passed allotting 4/9th share for the plaintiffs, Thiraviam Panickar and Ramaswamy Panickar and 2/9th share in favour of the 7th defendant and 3/9th share for the defendants 2 to 6. The first respondent has filed a petition to implead himself as the legal heir of the second plaintiff. The case of the petitioner is that the second plaintiff sold his 2/9th share in the property to one Manohar and that Manohar was not impleaded as a party in the final decree petition. The contention of the petitioner is that the first respondent is said to have been purchased the property from one Suseela who is the daughter of the first plaintiff. The first plaintiff is entitled only for 2/9th share in the property. A person who purchased the property from the legal heir of the first plaintiff cannot be impleaded as a legal heir of the second plaintiff. The first respondent did not purchased the share of Ramaswamy and he is not the legal heir of Ramaswamy and it is seen that the legal heir of the deceased respondents 5 and 9 were not impleaded in the petition.

10.In the above circumstances, it is seen that the trial Court without looking into the merits of the I.A. petition has mechanically allowed the petition merely on the ground that no counter was filed. Hence, this Civil Revision Petition is **allowed** by setting aside the order passed in I.A.No.42 of 2014 in O.S.No.454 of 1966 dated 17.03.2015 on the file of the learned II Additional District Munsif, Kuzhithurai. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)



To

The II Additional District Munsif,
Kuzhithurai.

+1 CC to M/s.P.JESSI JEEVA PRIYA, Advocate (SR-61395[F] dated
16/04/2019)

+1 CC to M/s.J.ANANDHAVALLI, Advocate (SR-61473[F] dated 22/04/2019
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C.R.P. (PD) (MD) No.1035 of 2015
16.04.2019

Mrn

AE (26.04.2019) 5P 4C