



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.02.2019

CORAM:

THE HONOURABLE **MR. JUSTICE S.S.SUNDAR**

C.R.P (MD) (PD) No.675 of 2013

and

M.P. (MD) No.1 of 2013

S.Murugan

... Petitioner

Vs.

1.Valli

2.E.Sivasubramanian

3.Saraswathy

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decree order passed in I.A.No.192 of 2012 in O.S.No.263 of 2010, dated 16.11.2012 on the file of the Principal Subordinate Court, Tirunelveli.

For Petitioner

: Mr.H.Arumugam

For Respondents

: Mr.R.Pon Karthikeyan

ORDER

This Civil Revision is filed against the order passed in I.A.No.192 of 2012 in O.S.No.263 of 2010, dated 16.11.2012 by the Principal Subordinate Court, Tirunelveli, dismissing the petition filed by the petitioner to implead the third respondent herein as a party to the suit.

2.The revision petitioner, as plaintiff, has filed a suit in O.S.No.263 of 2010 before the Principal Subordinate Court, Tirunelveli, for partition of his half share and to pass a preliminary decree and for consequential reliefs. The first defendant is the sister of the revision petitioner and the second defendant is his father. It is stated in the plaint that the suit property is the joint family property of the revision petitioner and his father, the second respondent herein. Even in the plaint, the plaintiff has admitted that he had another sister. The other sister was not impleaded on the ground that the suit property is the joint family property. After the amendment of Hindu Succession Act in 2005, the revision petitioner has filed an application to implead the other sister of the petitioner as a party to the suit.

3.In the affidavit filed in support of the petition, it is averred that the female heirs are also entitled to the property by virtue of Hindu Succession (Amendment) Act. The said application was contested by the respondent mainly on the ground that the



petition was not filed by the revision petitioner, as the affidavit was filed by the wife of the petitioner, who is not competent to swear on behalf of the petitioner without a valid power. It was also stated that this application has been filed only when the suit is posted for judgment. The lower Court dismissed the application accepting the submission of the respondent. As contended by the respondent, the lower Court has held that the affidavit filed by the petitioner's wife in support of the petition without an authorisation by way of power of attorney in favour of the wife. It was further held that the petition has been filed by the petitioner's wife, who has no connection whatsoever with the suit proceedings. The trial Court also found that the suit is pending from 2010 and that there is no explanation for the long delay in filing the application. Stating that the petition has been filed only to protract the proceedings, this petition was dismissed.

4. The learned Counsel for the petitioner submitted that the petitioner's wife can file an affidavit in support of the petition filed on behalf of the petitioner. He further submitted that the fact that the third respondent is a sister of the petitioner is not in dispute. The suit for partition without impleading one of the sharers, who is also entitled to a share, cannot be dismissed on any technical ground, as the intention of the Court should always be to avoid multiplicity of proceedings. It is not in dispute that the petitioner claims that the suit property is a joint family property.

5. Since the second defendant denied the character of the suit property and according to him, the suit property is his absolute property having been given to him in a family partition dated 27.11.1994, the dispute is also with regard to the character of the suit property. The fact that the second defendant has executed a settlement deed in favour of the first defendant and that it is challenged in the suit is not in dispute. Having regard to the nature of plea taken by the revision petitioner in the plaint, the third respondent is also a necessary party to the proceedings and the suit is liable to be dismissed on the ground of non-joinder of necessary party, in case the plaintiff / respondent establish the fact that the suit property is a joint family property. As per the amendment of Hindu Succession Act, 2005, the third respondent is also entitled to a share in the property, which is equivalent to that of a son.

6. In such circumstances, it was proper on the part of the plaintiff to implead the third respondent as a party to the proceedings. The said petition was dismissed only on two grounds. The fact that the petition was filed at the far-end of the trial or when the suit was posted for arguments may be a ground to dismiss a petition in other circumstances. However, having regard to the admitted fact in this case that the suit can be dismissed as not maintainable without impleading the third respondent, the Court is expected to take a fair decision and to render substantial justice.



The affidavit is filed to support the petition. The signature of the petitioner / husband is not necessary in the petition. The wife can give evidence on behalf of husband without a power of attorney.

7. It is well settled that an affidavit can be filed by any one, who had acquaintance and who says that he is authorised. The petition cannot be dismissed on that ground unless there are other reasons doubting *bona fides*. In the present case, when the facts are not disputed, no significance can be attached to the affidavit being filed only by the wife. The wife also can represent the husband, if the Court permits. In this case, the petitioner is stated to be working in Border Security Force and that during his physical absence, the wife can be permitted to file an affidavit on behalf of her husband. There is no illegality in accepting the affidavit from the wife. Hence, this Court has no hesitation to allow this petition. As a result, this Civil Revision Petition is allowed and the order in I.A.No.192 of 2012 in O.S.No.263 of 2010, dated 16.11.2012 by the Principal Subordinate Court, Tirunelveli, is set aside.

8. Having regard to the facts and circumstances of the case, the Principal Subordinate Court, Tirunelveli, is directed to dispose of the suit within period of four months from the date of receipt of a copy of this order after giving sufficient opportunities to the third respondent. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CRL SIDE)

// True Copy //

Sub Assistant Registrar (CS)

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To

The Principal Subordinate Court, Tirunelveli.

+1CC TO MR.H.ARUMUGAM, Advocate Sr. No.44903

+1CC TO MR.R.PON KARTHIKEYAN, Advocate Sr. No. 44887

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TR (04.04.2019) 3P 4C