

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(PD).No.1924 of 2015

1. T.Soundarajan,
2. T.Velraj,

... Petitioners

Vs.

1. R.Semavathi
2. Dhanalakshmi
3. Revathi
4. Shanthi
5. Thilagavathi
6. T.Bindu
7. Saroja
8. Dharmaraj
9. Pradeep
10. Manivannan
11. Thilaga
12. Ali

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decretal orders dated 21.01.2015 in IA.No.1193 of 2014 in O.S.No.800 of 2010 on the file of the III Additional Subordinate Judge's Court, Coimbatore.

For Petitioners : M/s.C.R.Prasanan

For Respondents : Mr.C.D.Sugumar for R1 to R5

R6 to R12 given up

ORDER

This Civil Revision Petition has been filed by the respondents 5 and 6/defendants 1 and 2 against the order passed in I.A.No.1193 of 2014 in O.S.No.800 of 2010 on the file of the III Additional Sub Judge, Coimbatore dated 21.01.2015.

2. Respondents 2 to 5 herein have filed a suit in O.S.No.800 of 2010 on the file of the III Additional Sub Judge, Coimbatore to divide the suit properties into two equal shares and allot one such share to them. During pendency of the said suit, the first respondent herein who claims to be the mother of the respondents 2 to 5 have filed an application in I.A.No.1193 of 2014 under Order 1 Rule 10 of CPC to implead her as fifth plaintiff. The learned III Additional Sub Judge, Coimbatore by the order dated 21.01.2015 has allowed the said application. Feeling aggrieved, the respondents 5 and 6 therein/defendants 1 and 2 have filed the present Civil Revision Petition.

3. Heard Mr.C.R.Prasanan, the learned counsel for the petitioners and Mr.C.D.Sugumar, the learned counsel for the respondents 1 to 5.

4. The learned counsel for the petitioners has submitted that the suit property originally belonged to one Tmt.Themmammal and she executed a registered Will dated 11.11.1960 bequeathing the suit property equally in favour of her two sons namely T.Raman and T.Thiagarajan by giving life interest to them and absolute right to the male children of the said Raman and Thiagarajan. He further submitted that the said Themmmammal died on 22.10.1964 and thereafter the said Will came into force and thereafter one of the sons of the said Themmmammal viz., T.Raman had filed a suit in O.S.No.3418 of 1981 on the file of the District Munsif, Coimbatore for partition against his brother T.Thiagarajan. The said suit was dismissed. As against the same, the said Raman filed A.S.No.116 of 1987 on the file of the District Judge of Coimbatore and during the pendency of the said appeal, the parties settled their dispute between themselves and a compromise decree was passed on 05.09.1988 and as per the said decree, half share was allotted to the said Raman and another half share was allotted to his brother

Thiagarajan. He further submitted that eventhough, a compromise decree was passed, as per the original Will, only the male children of the said Raman and Thiagarajan are having absolute right over the said property and that being so, the said compromise decree will not bind upon the male children of the aforesaid persons and hence in pursuance of the said compromise decree title was not transferred to the said Raman and Thiagarajan. He further submitted that the respondents 2 to 5 who are claiming to be the daughters of the said Raman had filed a suit in O.S.No.800 of 2010 on the file of the III Additional Sub Judge, Coimbatore claiming partition stating that as per the compromise decree, Raman got absolute right over half share of the property and subsequently, the said Raman died intestate on 29.12.2008 and hence they are entitled for half share in the suit property. He further submitted that the petitioners herein who are the male children of Thiagarajan are alone entitled to get the entire property as per the original Will executed by Themammal. He further submitted that when the said suit was taken up for trial, the parties also adduced evidence at that stage, the first respondent who is wife of the said Raman has filed an application in I.A.No.1193 of 2014 to implead her as plaintiff. He further submitted that when the original plaintiffs themselves have no right to file suit for

partition, their mother is also not entitled to claim right over the property and she has filed the said application belatedly only with a view to drag on the proceedings, but, without considering the aforesaid facts, the trial court has allowed the said application and hence he requests to set aside the order passed by the learned III Additional Sub Judge, Coimbatore in I.A.No.1193 of 2014 dated 21.01.2015 .

5. Per contra, the learned counsel for the first respondent has submitted that the question as to whether the compromise decree which was passed in AS.No.116 of 1987 will bind upon the petitioners herein or not is yet to be decided in the suit. In case, the trial court comes to the conclusion that the said decree is a valid one and in pursuance of the said decree, the respondents 2 to 5 herein/plaintiffs are entitled to get share in the suit properties, the first respondent being the wife of the said Raman is also entitled to get a share and in such a case, she has to go for another suit and that will delay the proceedings. He further submitted that taking into consideration the aforesaid facts, the trial court has rightly allowed the first respondent to implead as a plaintiff and therefore he prayed for dismissal.

6. As rightly submitted by the learned counsel for the first respondent, the question as to whether the compromise decree which was passed in AS.No.116 of 1987 will bind upon the petitioners or not has to be decided in the suit in OS.No.800 of 2010. In this proceedings, this Court cannot decide whether the compromise decree passed in A.S.No.116 of 1997 is a valid one and whether that will not bind upon the petitioners herein.

7. In case, the trial court comes to the conclusion that the said decree will bind the petitioners herein and the respondents 2 to 5 are entitled to get share in the suit property, the first respondent herein, being the wife of the said Raman, also entitled to get a share and in such a case, she has to file another suit and that would delay the proceedings. Hence, this Court is of the view that the first respondent is a necessary party to the aforesaid suit. However, she is not entitled to participate as plaintiff, at the most she can be impleaded as one of the defendants.

8. In the result, the order passed by the learned III Additional Sub Judge, Coimbatore in I.A.No.1193 of 2014 is modified to the effect that the petitioner therein/first respondent herein shall be added as one of the

defendants in the suit. With the aforesaid modification, this Civil Revision Petition is disposed of. No costs. Considering the facts that the suit is pending for the past ten years, the trial court is directed to make necessary amendments within a week from the date of receipt of a copy of this order and thereafter, the first respondent herein has to file written statement within two weeks and thereafter, the petitioners herein can file reply statement, if any, within two weeks. After completing the aforesaid process, the trial court shall dispose of the aforesaid suit within six months.

05.10.2020

Vv

Index :Yes/No

Internet : Yes/No

To

1.The III Additional Subordinate Judge's Court,

Coimbatore.

P.RAJAMANICKAM.J.,

Vv



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