



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No. 2416 of 2018
and
C.M.P.No. 14870 of 2018

1.Umamaheswari
2.Alamelu

...Petitioners/Appellants

.Vs.

1.Kannu @ Kandasamy Gounder
2.Balachandran
3.Pazhanivel

..Respondents/Respondents 1 & 2
& Proposed party

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 11.12.2015 made in I.A.No. 20 of 2015 in A.S.No. 1 of 2015 on the file of the learned III - Additional District Court, Kallakurichi.

For Petitioners : Mr.C.Harish
for N.Manokaran
For Respondents : Mr.A.Arunbabu for R1 and R2
Ms.S.Umamaheswari for R3

O R D E R

The plaintiff in O.S.No. 10 of 2010 have come up with this civil revision petition, challenging the dismissal of an application in I.A.No. 20 of 2015 filed by them in A.S.No. 1 of 2015 seeking impleading of a purchaser of a portion of the suit properties prior to the suit.

2. The suit in O.S.No. 10 of 2010 is one for partition and separate possession of the plaintiffs 1/4th share each in the suit properties. According to the plaintiffs, the suit properties belonged to the joint family consisting of the plaintiffs and the defendants 1 and 2. The plaintiffs are the children of the first defendant. Claiming that they had become co-parceners by virtue of Act 39 of 2005 the plaintiffs sought for partition and separate possession of their half share (1/4th



each) in the suit properties.

3. The suit was resisted by the defendants contending that suit properties are not joint family properties or ancestral properties. According to the defendants, the suit properties are self-acquisitions of the first defendant and therefore the plaintiffs cannot claim share.

4. It was also pointed out that some of the properties were alienated by the first defendant in order to repay the debts incurred for the performance of the marriages of the plaintiffs. The Trial Court upheld the defence that the suit properties are self-acquisitions of Kannu @ Kandasamy Gounder and concluded that the plaintiffs have no right to demand partition. On the above conclusion, the Trial Court dismissed the suit. Aggrieved, the plaintiffs have preferred an appeal in A.S.No.1 of 2015.

5. Pending appeal, the plaintiffs came up with I.A.No.20 of 2015 seeking to implead one Pazhanivel son of Ramasamy claiming he is a purchaser of the portion of the suit properties under sale deed dated 30.12.2009. The Appellate Court dismissed the application on the conclusion that though the plaintiffs were aware of the alienation, they had not chosen to implead the purchaser in the suit. The Appellate Court also characterized the application as highly belated.

6. I have heard Mr.C.Harish, for Mr.N.Manokaran, learned counsel for the petitioners, Mr.A.Arun Babu, learned counsel for the respondents 1 and 2. Ms.S.Umamaheswari for the third respondent.

7. The learned counsel for the petitioners would contend that the Appellate Court was not right in dismissing the application for impleading when the sale in favour of the proposed party is admitted. If the Appellate Court agrees with the contentions of the petitioner to the effect that the properties are ancestral properties, the purchaser will also be affected. No decree could be passed in his absence. Therefore, he is a necessary party to the appeal. The suit is one for partition, the Trial Court was wrong in dismissing the application as belated.

8. Contending contra, Mr.A.Arun Babu would draw my attention to the evidence of the plaintiffs as P.W.1 and P.W.2 wherein, the second plaintiff has stated that she has no objection for alienation made by the father and she is not seeking a share in the properties alienated.

9. I do not think the said evidence would form basis for



deciding whether the proposed party is a necessary party or not. Being a purchaser prior to the suit and the suit being one for partition it is open to the purchaser to claim certain rights in the event the appellate court agrees with the claim of the plaintiffs. I am therefore of the considered opinion that in order to shorten the litigation and to avoid multiplicity of proceedings, it is always better to implead the proposed party and decide the dispute effectively in his presence. I therefore conclude that the Appellate Court is not right in dismissing the application as belated. In the light of the above, the civil revision petition is allowed, the order of the Appellate Court is set aside, I.A.No.20 of 2015 will stand allowed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To:

The III - Additional District Court,
Kallakurichi.

+1cc to Mr.A.Arun Babu, Advocate, Sr.No.34579

+1cc to Mr.N.Manokaran, Advocate, Sr.No.34571

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rr ii (27/11/2020)