

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2020

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN**

C.R.P. (NPD) No.2696 of 2018  
& C.M.P.No.15965 of 2018

Alamelu

... Petitioner

Vs.

1. Rajeswari

2. Vijaya

3. V.Raja Raja Solan

4. Neelavathy

5. Vasumathy

6. Suseela Varadharajan

7. Radha @ Rajalakshmi सत्यमेव जयते

8. Sadayappan @ Sadaiya Gounder

9. Minor Perumal @ Varatharaja Peruma;

Minor represented by his next friend and  
Guardian elder sister 7<sup>th</sup> respondent

Radha @ Rajalakshmi

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the fair and decretal order of the learned Principal District Judge, Salem dated 04.07.2017 in I.A.22 of 2017 in A.S.No.110 of 2015.

For Petitioner : Mr.T.M.Hariharan

For Respondents : Mr. S.Kalyanaraman  
for RR 10, 12, 13 & 14

ORDER

This matter is taken up for hearing through Video-Conferencing.

This Revision is against an order of the learned Principal District Judge, Salem, dismissing an application in IA No.22 of 2017 filed by the petitioner seeking to implead herself in the Appeal.

2. A suit in OS No.86 of 2006 was filed by one Palaniappan son of Kuppanna Gounder, claiming a 1/3rd share in the suit properties contending that Kuppanna Gounder died leaving behind himself (son through the first wife), Murugesan and Varadaraju (sons through the second

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wife). Since Varadaraju died prior to the suit, his legal representatives were impleaded as defendants 2 to 5. Pending the suit Murugesan also died, so his legal representatives were impleaded as defendants 6 to 11.

3. The suit was eventually decreed on 16.04.2010, granting the 1/3rd share as claimed by the plaintiff. Aggrieved by the said judgment and decree, the defendants 7 and 8 in the suit, viz, the daughters of Murugesan have filed an Appeal in AS No.110 of 2015. Pending the Appeal, the plaintiff who was shown as the first respondent also died, his legal representatives were impleaded as respondents 9 to 13. While things stood thus, the petitioner herein filed IA No.22 of 2017 seeking to implead herself in the Appeal contending that she is the daughter of Kuppanna Gounder and therefore, she is entitled to a share in the suit property.

4. This application was resisted by the respondents 11 to 15 viz., the legal representatives of the plaintiff on the ground that after the preliminary decree an application in IA No.612 of 2010 was filed for passing of final decree. A final decree has also been passed and they have filed Execution

proceedings in REP No.74 of 2014 seeking execution of the final decree. Therefore, the application is not maintainable. It was also alleged that the petitioner is not the daughter of the deceased Kuppanna Gounder.

5. The Appellate Court which considered the application did not decide the status of the petitioner. The learned Appellate Judge concluded that since a final decree has been passed and that has also been put in execution, the petitioner who claims an independent right cannot be made a party in the Appeal. On the said conclusion, the learned Appellate Judge dismissed the application for impleading.

6. I have heard Mr.T.M.Hariharan, learned counsel appearing for the petitioner and Mr.S.Kalyanaraman, learned counsel appearing for the respondents 10, 12, 13 and 14. The other respondents except the 11<sup>th</sup> respondent though served are not appearing either in person or through counsel duly instructed. Respondents 10, 12, 13 & 14 are the children of Palaniappan the original plaintiff, the 11<sup>th</sup> respondent is also one of the sons

of Palaniappan. Since the estate of Palaniappan is represented by the learned counsel Mr.S.Kalyanaraman, the notice to the 11th respondent is dispensed with.

7. Mr.T.M.Hariharan, learned counsel appearing for the petitioner would vehemently contend that the Appellate Court was not right in dismissing the application without deciding the claim of the petitioner. He would also fault the Appellate Court for observing that the petitioner has got a separate and independent cause of action to file a fresh suit for partition. He would also submit that, that would only prolong the proceedings forever and the action of the Appellate Court in dismissing the application would lead to multiplicity of proceedings.

8. Contending contra Mr.S.Kalyanaraman, learned counsel would submit that the partition suit has been decreed, a final decree has also been passed and the Execution Petition is pending. In these circumstances, the Appellate Court was right in dismissing the application.

9. I have considered the rival submissions.

10. The suit is one for partition. All the legal representatives of the deceased Kuppanna Gounder must have been made parties. The petitioner claims as the daughter of Kuppanna Gounder admittedly she was not made a party. Therefore, the decree is not binding on her. She can very well choose to ignore the decree and file another suit for partition. If that course is adopted it will lead only to multiplicity of proceedings. Now that the Appellate Court is ceased of the entire matter and in the absence of any dispute regarding the shares between the parties, the issue can be resolved by the Appellate Court. Since the respondents have denied the status of the petitioner, the Appellate Court must have decided, as to whether, she is the daughter of Kuppanna Gounder or not, before proceeding further. The Appellate Court has failed to go into the moot point, as to whether, the petitioner's claims that she is the daughter of Kuppanna Gounder is true or not. The other reasons of the Appellate Court to dismiss the application do not appear to be sound.

11. The Courts must venture into shortening litigation by taking corrective measure when a certain flaw is brought to its notice. The Court cannot say that the suit or proceedings will go on with the defect and it will be open to the person who is not made a party to the proceedings to question it at later point of time, more so, when such person comes before Court and says, please hear me before you proceed further.

12. In view of the above, I am satisfied that the order of the Appellate Court, it is liable to be set aside and it is accordingly set aside. The Civil Revision Petition is allowed, the petitioner is impleaded as the 16th respondent in the Appeal. The Appellate Court is directed to proceed with the Appeal as per law. The amended Memorandum of grounds shall be filed within a period of four weeks from the date of receipt of the copy of the order by the appellants. No costs. Consequently, the connected miscellaneous petition is closed.

07.10.2020

jv

Index: Yes/No  
Internet: Yes/No  
Speaking Order/Non Speaking order

To

1.The Principal District Judge,  
Salem.

2.The Section Officer,  
V.R.Section,

3.High Court of Madras.



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**R.SUBRAMANIAN, J.**

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