

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 22ND DAY OF DECEMBER 2020

THE HON'BLE MS.JUSTICE P.T.ASHA

A.No.2297 of 2020

in

C.S.No.518 of 2007

R.M.Meenal,
5203, Julestar,
Dr.Centreville, VA., 20120 – 3019, USA,
Rep. By her Power of Attorney Agent,
S.Thirunavukkarasu,
No.21, Sreepuram Colony,
First Cross Street,
St.Thomas Mount,
Chennai-600 016.

.... Plaintiff

-Vs-

1.R.M.Sethu,
Sethu Illam,
B-93, Park View Road,
Anna Nagar,
Thenmore,
Trichy-620 017.

2.R.M.Thennammai,
15/4, Rajabadhar Street,
T.Nagar,
Chennai-600 017.

3.M.Sornam,
No.10 (Old No.12),
West Avenue Road,
Kodambakkam,
Chennai-600 024.

* 4.PL.Chidambaram (Deceased),
S/o.PL.Palaniappa Chettiar

*(4th defendant impleaded as per order dated
05/12/2008 in A.No.4379 of 2008 and Condone
the delay to carryout Amendment as per order dated 19/11/2013 in
A.No.3957 of 2013)

(**)5.CT.Valikannu,
W/o.PL.Chidambaram,
Vinobaji Street,
Mannargudi-614 001.
Thiruvarur District.

(**)6.CT.Sethuraja,
S/o PL.Chidambaram,
Vinobaji Street,
Mannargudi-614 001.
Thiruvarur District.

(**)7.CT.Suganthi,
D/o PL.Chidambaram,
Vinobaji Street,
Mannargudi-614 001.
Thiruvarur District.

(**) (Defendants 5 to 7 are brought on record as
Legal heirs of the deceased 4th Defendant as per order
dated 02.01.2014 in Appln No.5868 of 2013)

(***)8.D.S.Kulkarni Developers Limited,
"Gayathri" 3rd Floor,
No.3, Dr.Nedunchezian Road,
Kalakshetra Colony,
Besant Nagar,
Chennai-600 090.

(***)9.Numart Develkopers Private Limited,
"Mantri House", No.41,
Vittal Mallya Road,
Bangalore-560 001.

... Defendants

(**) Defendants 8 to 9 impleaded as per order dated 30/08/2016 in Appln.No.654/2014)

A.No.2297 of 2020:

M.Sornam,
No.10, (Old No.12),
West Avenue Road,
Kodambakkam,
Chennai-600 024.

...Applicant

-Vs-

1.R.M.Meenal,
5203, Julestar, Dr.Centreville,
VA., 20120 – 3019, USA,
Rep. By her Power of Attorney Agent,
S.Thirunavukkarasu,
No.21, Sreepuram Colony,
First Cross Street,
St.Thomas Mount,
Chennai-600 016.

2.RM.Sethu,
Sethu Illam,
B.93, Park View Road,
Anna Nagar, Thennore,
Trichy-620 017.

3.RM.Thenammai,
15/4, Rajabadhar Street,
T.Nagar, Chenani-600 017.

PL.Chidambaram (Deceased)

4.CT.Vallikannu,
W/o.PL.Chidambaram,
Vinobaji Street,
Mannargudi-614 001,
Thiruvannamalai District.

5.CT.Sethuraja,
S/o.PL.Chidambaram,
Vinobaji Street, Thiruvarur District,
Mannargudi-614001.

6.CT.Suganthi,
D/o.PL.Chidambaram,
Vinobaji Street, Thiruvarur District,
Mannargudi-614001.

7.D.S.Kulkarni Developers Limited,
“Gayathri”, 3rd Floor,
No.3, Dr.Nduncheezhian Road,
Kalakshetra Colony,
Besant Nagar, Chennai-600 090.

8.NuMart Developers Pvt Ltd.,
“Mantri House”, No.41,
Vittal Mallya Road,
Bangalore-560 001.

...Respondents

Application praying that this Hon'ble Court be pleased to transpose applicant as the 2nd Plaintiff from that of the 3rd Defendant in the above suit.

This application coming on this day before this court for hearing the court made the following order:

Reserved on : 09.12.2020

Delivered on : 22.12.2020

The application that is placed for the consideration of the Court is an application to transpose the third defendant as the second plaintiff in a suit for partition.

2. Background of the Case:

a) A brief resume of the facts preceeding the filing of this application is herein below narrated:

The first respondent had instituted the suit C.S.No.518 of 2007 on the file of this Court for a partition and separate possession of her 1/3rd share in the suit schedule properties besides other reliefs. The second respondent herein and the applicant are her siblings and the third respondent is their mother.

b) The suit has been instituted on the following facts. The paternal grandfather of the plaintiff, Late Palaniappa Chettiar had purchased the properties of the Joint Hindu Family during his lifetime from out of the Joint Family nucleus in the name of various members of his Joint Hindu Family. Some of the properties were divided and distributed to the Joint families of his sons which included the father of the plaintiff and defendants 1 and 3 and husband of the second defendant, PL. Ramanathan @ PL. Meenatchi Sundaram. Therefore the properties in the hands of PL Ramanathan @ PL Meenatchi Sundaram is traceable only to the ancestral nucleus and therefore cannot be claimed to be the self acquired properties of the said PL Ramanathan. Therefore the first respondent contended that she has a vested right, title and interest over the same as a coparcener.

c) She would further contend that when her father died on 10.04.1992

she was 17 years of age and unmarried. She had got married in the year 1995.

d) It is her case that after the death of her father, the second respondent had taken over and was managing the joint family properties in India and Malaysia. Their father had executed a Will dated 04.03.1991 as his last Will and Testament and had appointed the third respondent and one Vallieppa @ Palaniappan @ Sinne Valieppan @ Valieppa Chettiar as the executors of the Will. However, the second respondent refused to allow his mother to perform her duties as an executrix.

e) Since the second respondent was acting against the interests of the joint family and was alienating the properties, the first respondent being a coparcener has come forward with the suit.

3. Application for Transpose:

a) After Trail had concluded in the Suit and when the matter was listed for arguments, the applicant/3rd defendant has come forward with the instant application to transpose her as the second plaintiff in the suit. It is pertinent to note that the applicant had neither filed her written statement

b) In the affidavit filed in support of her application, the applicant would contend that when the suit was in progress she was under the impression that since she had got married on 01.02.1988 she would not have any chance of success as she had married prior to the State Amendment Act, 1989. Thereafter in the year 2005 when Central Act 39 of 2005 had come into effect from 09.09.2005 she has consulted some lawyer who opined that the Act does not have a retrospective effect and therefore the chances of her getting a share was rather slim. Therefore she had not seriously contested the Suit.

c) It is only recently when she came across a newspaper report about the Hon'ble Supreme Court passing a Judgement giving female heirs a right in the ancestral property as coparceners that she had come to know that she has a right. The applicant would further submit that she is the most competent person to talk about her grandfather's business in Malaysia and the wealth accumulated by him. In these circumstances she sought to have herself transposed as the second plaintiff.

4. Counter to the Application:

a) The first respondent/plaintiff has no objection to the third defendant being transposed as the second plaintiff.

b) The second respondent/first defendant has filed a counter inter alia contending that the right now claimed by the applicant being a legal right, can be canvassed even if the applicant were to continue as a defendant and the applicant could lead evidence without upsetting the evidence already on record. In a suit for partition since all parties are plaintiffs the presence of the applicant as a plaintiff or defendant would not matter.

c) The 9th respondent/9th defendant, who are the purchasers from the second respondent has filed a detailed counter in which they would contend that except for the applicant all the other defendants have filed their written statement. They would contend that they are only interested in the land measuring an extent of 2.85 acres comprised in S.No.208/3A, New Survey No.208/20 Nagalkeni, Pammal Village, Chrompet.

d) The 9th respondent would further contend that they and their predecessors in title have been in possession of the above property from 1992 (year of death of the father of the Applicant and Respondents 1 and 2) and the applicant has never taken any step to claim possession of this property and therefore they have proved ouster against her for over two decades. Under the last Will dated 04.03.1991, the second respondent has

exclusive owner to the knowledge of the others. By transposing the applicant at this stage the 9th respondent would be denied the defense of ouster against the applicant. They would therefore contend that if the Court were to allow the petition then it may be observed that the Applicant will not be entitled to claim the benefits of Sec 21(2) of the Limitation Act and the suit should be deemed to have been instituted only on the date of the presentation.

5. Submissions:

a) Mr. V. Raghavachari, learned counsel appearing on behalf of the applicant would contend that the cause of action for seeking to have herself transposed accrued to the applicant only after the Judgment in the case of *"Vineetha Sharma Vs Rakesh Sharma reported in [(2020) SCC Online page 641]"* was pronounced by the Hon'ble Supreme Court. By this judgment the right of the applicant stood crystallised. He would further argue that the plea of limitation will not apply as by reason of the aforesaid judgment the right of a female as a coparcener is available from birth. Further the plea of estoppel is also not available to the respondents. He would also rely on the case - *"S.SaReddy vs S. Narayana Reddy reported in [1991 (3) SCC Page 647]"* with particular reference to paragraph 7. He would also argue that the 1st respondent/plaintiff is likely to abandon the suit as she has reached a

settlement with the 2nd respondent/first defendant and therefore on this ground also the transpose should be ordered.

b) Mr. Babu, learned counsel appearing on behalf of the second respondent would argue that the application is nothing but an attempt to protract the proceedings. He would further contend that the applicant could still raise the same contentions even as a defendant and therefore there was no necessity to transpose herself as a plaintiff.

c) Mr. Vivekanandan, learned counsel appearing on behalf of the 9th defendant would focus his arguments on the issue of ouster in so far as it relates to the property purchased by them. He would submit that even in the affidavit filed in support of her application the applicant had contended that she was all along under the belief that she did not have any right in the property and that she could not avail the benefits of the State Amendment Act 1989 and the Central Act of 2005. Therefore he would contend that it was only on the above basis, the applicant had recognised the absolute ownership of the second respondent to the property purchased by the 9th respondent. He would therefore contend that in the event of this Court transposing the applicant as the second plaintiff then she should not be

should be deemed to have been instituted only on the date of the filing of the application.

6. Discussion:

A) The application before this Court is one seeking to transpose the defendant as a plaintiff. The said application is filed invoking the provisions of Order 1 Rule 10 of the Code of Civil Procedure. Order 1 Rule 10 (1) CPC talks about two situations where the Court could substitute the name of the plaintiff/strike out or add parties.

- a) where a suit is instituted in the name of a wrong person;
- b) where there is a doubt whether the suit has been instituted in the name of the right plaintiff.

Upon the occurrence of the above, the Court may, at any stage of the suit, if satisfied that the mistake is bonafide, and that for determining the issue in dispute, order any other person to be substituted or added as plaintiff upon such terms as the Court deems fit.

Order 1 Rule 10 (2) talks about the manner in which the Court could add or strike off a party. The Rule provides that the Court may suo moto without an application of either party or upon an application order that the name of any party improperly joined either as a plaintiff or a defendant be struck off and add the name of the person who ought to be added as plaintiff or

complete adjudication of the questions involved in the suit. Where the person who is sought to be added suffers from any legal disability, then he shall be added only with the consent of his next friend. Sub Rule 4 talks about the procedure, post the adding or striking of the parties. Sub Rule 5 provides that when a defendant is added under the provisions of Order 1 Rule 10, then proceedings would be deemed to have been commenced on such newly added defendant only on the date of the service of the summons.

B) The other provisions under the Code of Civil Procedure which contemplate transposition is the provisions of Order 23 Rule (1A) which reads as follows:

"1A. When transposition of defendants as plaintiffs may be permitted.- Where a Suit is withdrawn or abandoned by a plaintiff under rule 1, and a defendant applies to be transposed as a plaintiff under rule 10 of Order I, the court shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendant."

This provision talks about transposing a defendant as a plaintiff in a situation where the plaintiff withdraws or abandons the suit.

C) In the instant case, the application has been moved invoking the provisions of Order 1 Rule 10 and not under the provisions of Order 23 Rule 1 A of the CPC. In the affidavit filed in support of the application, the reasons for seeking such transposition has been narrated as follows:

i) The applicant has recently come to know about a Judgment of the Hon'ble Supreme Court granting coparcenary right to the family Members in the ancestral property. Since the Act is retroactive, the applicant/3rd defendant is sought to be transposed as the second plaintiff in the above suit.

ii) The applicant would be in a better position to establish the existence of a family nucleus as she was aware that her great-grandfather had carried on a lucrative money lending business in Malaysia and her grandfather had only augmented the wealth left behind by the great-grandfather. This formed the reasons on which the applicant had sought to be transposed as the second plaintiff. The reasons given therefore does not fall within any of the contingency contemplated under the provisions of

Although the Learned Counsel would argue that the first respondent/plaintiff is likely to abandon the suit such a pleading is not available in the affidavit filed in support of the application and appears an afterthought.

D) It is needless to state that in a suit for partition, all parties whether arrayed a plaintiff or a defendant, is considered a plaintiff. Further in the judgment of the Hon'ble Supreme Court **"S.SaReddy vs S. Narayana Reddy reported in [1991 (3) SCC Page 647]"** the Hon'ble Supreme Court had held that even after the preliminary decree if a legal right accrues to one of the parties then even in the absence of their not asking for a share the Court is bound to recognise this right and accordingly modify the preliminary decree. The Bench has observed as follows in Paragraph 7:

"The preliminary decree which determines shares does not bring about the final partition. For, pending the final decree the shares themselves are liable to be varied on account of the intervening events. In the instant case, there is no dispute that only a preliminary decree had been passed and before the final decree could be passed the

amending Act came into force as a result of which clause (ii) of Section 29-A of the Act became applicable. This intervening event which gave shares to respondents 2 to 5 had the effect of varying shares of the parties like any supervening development. Since the legislation is beneficial and placed on the statute book with the avowed object of benefiting women which is a vulnerable section of the society in all its stratas, it is necessary to give a liberal effect to it. For this reason also, we cannot equate the concept of partition that the legislature has in mind in the present case with a mere severance of the status of the joint family which can be effected by an expression of a mere desire by a family member to do so. The partition that the legislature has in mind in the present case is undoubtedly a partition completed in all respects and which has brought about an irreversible situation. A preliminary decree which merely declares shares which are themselves liable to change does not bring about any irreversible

situation. Hence we are of the view that unless a partition of the property is effected by metes and bounds, the daughters cannot be deprived of the benefits conferred by the Act. "

E) The applicant would seek to be transposed as a plaintiff only on the basis of the recent Judgment of the Hon'ble Supreme Court reported in 2020 SCC Online page "***Vineetha Sharma Vs Rakesh Sharma reported in [(2020) SCC Online page 641]***." The Hon'ble Supreme Court in the above judgment has held that the provisions of the substituted Section of the Hindu Succession Act, 1956 confers a status of a coparcener on the daughter born before or after the amendment in the same manner as the son with the same rights and liabilities. The Bench also held that since the right as a coparcener accrues by birth, it was immaterial whether the father (coparcener) was living as on 09.09.2005. Therefore in the light of the above judgment, the applicant would also have a equal right in the property.

F) This being a legal right available to the applicant by operation of law, the court is bound to allot a share to the applicant even without her seeking a share. In the case of "***Annapoorni vs Janaki reported in [1995 -1 Law Weekly 141]*** ", this Court had exercised its superintending power

under Article 227 of the Constitution of India and set aside a decree which overlooked the share of rightful heir.

G) Considering the fact that none of the ingredients as required under the Provisions of Order 1 Rule 10 and Order 23 Rule (1A) of the Code of Civil Procedure Code is made out in the application for transposing, the application is dismissed. It is needless to state that the applicant has every right to claim a share as coparcener in the property by virtue of the order in "*Vineetha Sharma's case* and the dicta laid down in *Sai Reddy's case*. Further it is open to all the parties to raise all the legal issues available to them in their arguments.

H) In the result the application is dismissed. Considering the fact that the recording of evidence has concluded, the suit is to be listed for arguments on 25.01.2021.

WEB COPY

Sd/-P.T.A.J
22.12.2020

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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II 04/01/2021