



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

CRP (PD) (MD)No.871 of 2020

&CMP(MD).5754 of 2020

WEB COPY

A.John Kennedy

...Petitioners/Respondent/1st Defendant

Vs.

1.Arockiyasamy

2.Anjel Mary

3.Minor Joshua

...Respondents/Petitioners/Defendants 2 to 4

(Rep. by his next friend,
the 1st petitioner herein)

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 06.12.2019 passed in I.A.No.1 of 2019 in O.S.No.12 of 2016 on the file of the Additional District and Sessions Judge, Sivagangai.

For Petitioner : Mr.N.Rahamadullah

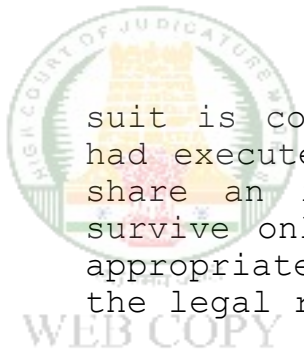
For Respondents : Mr.S.Sivathilagar

ORDER

This Civil Revision Petition is filed challenging the order dated 06.12.2019 passed in I.A.No.1 of 2019 in O.S.No.12 of 2016 on the file of the Additional District and Sessions Judge, Sivagangai.

2.A certain Amalraj owned few items of property. He was married to one Mariya Selvam and the couple had four children, John Kennedy, Arockiyasamy, Anjel Mary and Gracy. While so, Amalraj executed a settlement deed as concerning one of his properties in favour of his son John Kennedy. Be that as it may, the other children of Amalraj laid a suit in O.S.No.55 of 2013 for partition. In that suit, Amalraj is the first defendant and John Kennedy is the second defendant. Subsequently, Amalraj himself filed O.S.No.12 of 2016 for cancellation of the execution deed in favour of John Kennedy. During the pendency of the suit, Amalraj died. Therefore, defendants 2 to 4 in O.S.No.12 of 2016 moved I.A.No.1 of 2019 before the trial Court to transpose themselves as legal representatives of Amalraj. They all opposed the settlement deed which Amalraj had executed in favour of John Kenndy. I.A.No.1 of 2019 came to be allowed. This is under challenge in this Civil Revision Petition.

3.In terms of Order 22 Rule 3 CPC, where the cause of action for the suit survives, such of the legal representatives of the deceased plaintiff on whom it survives shall be impleaded as his legal representatives. So far as the cause of action for the present



suit is concerned, it relates to the settlement deed that Amalraj had executed in favour of John Kennedy. Since the other defendants share an identical view, the cause of action can be stated to survive only on them and not on John Kennedy. The Trial Court has appropriately transposed defendants 2 to 4 in O.S.No.12 of 2016 as the legal representatives of the original plaintiff Amalraj.

4.The only objection raised by the learned counsel for the revision petitioner is that this matter can be agitated in the pending partition suit.

5.This Court refrains to do the same, for, that suit stands at a slightly different footing. It would be ideal if both the suits were jointly tried but, this Court was informed that they were being tried simultaneously.

6.In conclusion, this Court does not find any merit in this Civil Revision Petition and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (crl side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1.The Additional District and Sessions Judge,
Sivagangai.

2.The Section Officer (2 copies)
V.R.Section, Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.S.SIVATHILAGAR, Advocate (SR-23842[F] dated
03/12/2020)

C.R.P. (PD) (MD)No.871 of 2020
02.12.2020

VB (28.12.2020) 2P 5C