



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 03.12.2019
DELIVERED ON : 05.02.2020

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CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

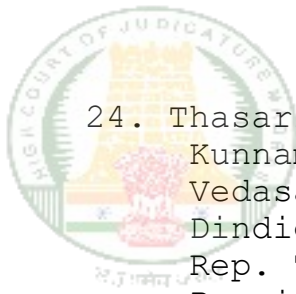
C.R.P. (MD)No.1546 of 2019
and
C.M.P. (MD)No.8208 of 2019

1.Govindammal @ Rajammal
2.Govindammal
3.Muthulakshmi

.. Petitioners/Respondents 5 to 7/
Defendants 5 to 7

Vs.

Veerathiammal (Died after the order)
Padammal (Died)
Periya Govindaraj (Died)
1.Chinnagovindaraj
Nagammal (Died)
2.Samiyappan
3.Sakkariraj
4.Subramani
5.Ramasamy
6.Ramar
7.Rani
8.Subbaiah
9.Thirupathi
10.Murugeswari
11.Easwari
12.Nagaraj
13.Pandiyammal
14.Palanimuthu
15.Erana Gounder
16.Alagiri Gounder
Nagalakshmi (Died)
17.Sikkunagammal
18.Subramani
19.Veeruthiammal
20.Sundararaj
21.Mariappan
22.Pandia Gounder
23.Rajammal



24. Thasarivar Kula Sri Nagammal Kovil,
Kunnampatti,
Vedasandur Taluk,
Dindigul District.
Rep. Through the Power Agent,
President Thiruppathi

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25.Dhandapani
26.Bagavathiammal @ Saroja
27.Guru Venkatasubramani
28.Palanisamy
29.Sakthivel
30.Muthulakshmi
31.Ramuthai
32.Amsavalli
33.Subbammal
34.Venkatachalam
35.Thiruppathi
36.Venkittan
37.Meenakshi
38.Periyasamy
39.Palanichamy

(Respondents 1 to 35-Notice dispense with

..Respondents/Respondents 3,8-22,24-46/

Respondents 3,8-22,24-46

Prayer: This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 29.06.2017 passed in I.A.No.597 of 2016 in O.S.No.400 of 2011 on the file of the learned Additional Sub Judge, Dindigul.

For Petitioner : Mrs.J.Anandhavalli

For Respondents 36 to 39 : Mr.A.Hariharan

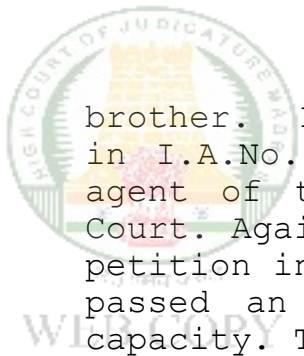
For Respondents 1 to 35 : Dispensed with

ORDER

Heard Mrs.J.Anandhavalli, learned counsel appearing for the petitioner and Mr.A.Hariharan, learned counsel appearing for the respondents 36 to 39.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.597 of 2016 in O.S.No.400 of 2011 dated 29.06.2017 on the file of the learned Additional Sub Judge, Dindigul.

3.The petitioners herein are the defendants 5 to 7 and the respondents herein are the defendants 3, 8 to 22, 24 to 46 in the suit. One Veeruthimmammal filed a suit in O.S.No.45 of 2004 through her power agents namely, Palanisamy and Krishnasamy against her



brother. In the suit, the petitioners herein have filed a petition in I.A.No.400 of 2010 to scrape the proof affidavit of the power agent of the plaintiff. The petition was dismissed by the trial Court. Against which, the petitioners herein have filed the revision petition in C.R.P.(MD)No. 894 of 2011. In that order, this Court has passed an order to treat P.W.1 as plaintiff in his individual capacity. The relevant portion of the order are as follows:

"4.In the result, the lower Court is directed to treat P.W.1 as the plaintiff side witness in his individual capacity and to proceed with the matter and to dispose of the matter within four months from the date of receipt of the copy of this order."

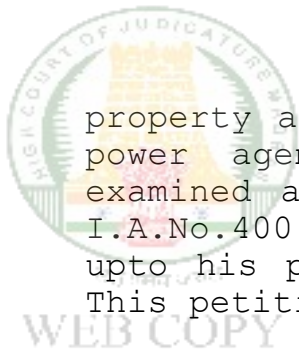
4.A petition in I.A.No.597 of 2016 was filed by the then power agent to implead the legal heir of the deceased fourth defendant. In that petition, the trial Court has passed an order to implead the power agent Palanisamy as the 46th respondent and as the legal heir to the fourth defendant and permitted him to proceed with the case as the second plaintiff in his individual capacity. The order reads as follows:

"The plaintiffs represented by her power agent Palanisamy, who happens to be one of the legal heir of the deceased 4th defendant. Now, he is to be impleaded, as a legal hier, in his individual capacity. In a partition suit, all parties, are plaintiffs and defendants, in their own stand, and the present power agent, though shown as R46, can continue to act an power agent and as well as 2nd plaintiff, in his individual capacity.

Procedure should not dictate and could only be a hand maid. A deceased person should not be left out and to safeguard the interest of the deceased, their legal representatives are to be brought on record. The power agent, who happens to be a son, has alleged about a Will, said to have been executed by D4 Nagammal on 06.05.2016. These issues, regarding validity of Will, is within the family of Nagammal, and how they are to divide her share, if at all she is entitled to a share in the suit properties. Technically need not stand in the way, as averred by the respondents in their counter."

5.Against this order, the revision petitioner has come forward with this petition.

6.On the side of the petitioners, it is stated that the suit properties belong to the father of the plaintiff and that the father and two sons constituted a Hindu Undivided Family and one of the brothers died issueless and that his wife pre-deceased him. Veerathiammal as a sister of the deceased, claimed half share in the



property and filed the suit. Later she was represented through her power agents Palanisamy and Krishnasamy. The power agent was examined as P.W.1. The defendants 5 to 7 filed an application in I.A.No.400 of 2010 stating that the power agent can depose facts upto his personal knowledge and he cannot depose any other facts. This petition was dismissed and subsequently Veerathiammal died.

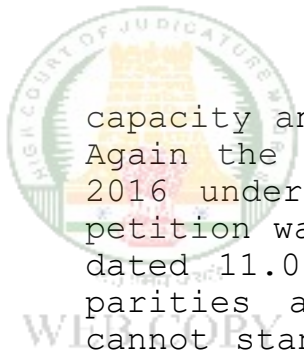
7.The petitioners herein have filed a revision petition in C.R.P.(MD)No.894 of 2011 and this Court disposed the petition with an observation. The power agent Palanisamy filed an application in I.A.No.597 of 2016 to implead the legal representative of deceased 4th defendant. In the affidavit itself, he has stated that "we filed a suit against the defendants". The trial Court passed an order stating that the power agent Palanisamy is to be impleaded as the second plaintiff in his individual capacity as well as the 46th defendant as the legal heir of the fourth defendant Nagammal. The petitioners herein have filed a memo stating that Veerathiammal died on 09.05.2019 intestate and therefore, the suit is to be dismissed.

8.The said Palanisamy cannot be impleaded as the 46th respondent as well as the second plaintiff. Because same person cannot be a plaintiff as well as a defendant acting dual role. As soon as a person die, the power deed become invalid, and hence, Palanisamy cannot act as a power agent of deceased first respondent Veerathiammal. Palanisamy could not have any right, when Veerathiammal was alive. After the death of Veerathiammal, her right over the share of the property of her brother cease to exist. Palanisamy claimed the property through a Will which was said to have been executed by Veerathiammal.

9.On the side of the respondents, it is stated that originally, the suit in O.S.No.78 of 1999 was filed by Veerathiammal and the suit was transferred to Fast Track Court, and was numbered as O.S.No.45 of 2004 and again the suit was transferred to the Additional Sub Court and was taken on file as O.S.No.400 of 2011. Due to old age, Veerathirammal gave power deed to Krishnasamy and Palanisamy. Out of them, Krishnasamy died and Palanisamy was examined as P.W.1 and I.A.No.400 of 2010 was filed before the Fast Track Court to scrape the evidence of P.W.1.

10.On the side of the respondents, it is stated that the respondents examined P.W.1 and proof affidavit was filed and 39 documents were marked as Exs.A1 to A39 and 23 documents were marked as Exs.C1 to C23.

11.On the side of the respondents, it is stated that I.A.No.400 of 2010 was filed before the Fast Track Court to scrape the evidence of P.W.1 and that petition was dismissed by the Court. The order in I.A.No.400 of 2010 was questioned in C.R.P.(MD)No.894 of 2011 and in that civil revision petition, this Court has passed an order directing P.W.1 as plaintiff side evidence in his individual

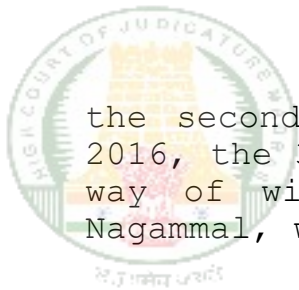


capacity and to dispose of the case within a period of four months. Again the defendants 5 to 7 filed a petition in C.R.P.(MD)No.8 of 2016 under Order VII Rule 11 of CPC to reject the suit and the petition was dismissed. The plaintiff died leaving a registered Will dated 11.06.2012. It is stated that in a partition suit, all the parties are plaintiff and defendants and the technical defect cannot stand in the way of justice and that there is no illegality in the impleading order and that this civil revision petition is filed after two years and this petition is to be dismissed.

12.On the side of the petitioners, it is stated that the respondents claim title through a Will of the fourth defendant, not that of the plaintiff. The petition to implead the legal heirs of the fourth defendant was filed. The order in I.A.No.597 of 2016 gave a separate right for the 46th defendant to be impleaded as the second plaintiff whereas the respondent is only a power agent and the power given to him ceases to exist as soon as the principal died.

13.It is seen that the suit property belongs to the father of Veerathiammal. Veerathiammal had two brothers. One of the brother died issueless and his wife pre-deceased him. Veerathiammal has filed a suit in O.S.No.78 of 1999 against the brother claiming half share in the property as the legal heir of the deceased brother. Subsequently, the suit was transferred to the Fast Track Court and was numbered as O.S.No.45 of 2004. Again the suit was transferred to the learned Additional Sub Judge, Dindigul and was numbered as 400 of 2011. It is seen that the Veerathiammal engaged one Krishnasamy and Palanisamy as her power agents to conduct the suit. Out of the two, Krishnasamys died and Palanisamy is the 39th respondent herein. It is seen that the 30th defendant filed written statement and on 07.07.2009 itself, deceased Veerathiammal filed proof affidavit and 39 documents were examined as Exs.P1 to P39 and 23 documents were marked as Exs.C1 to C23 through him. At that stage, the revision petitioners herein have filed I.A. Petition before the Fast Track Court in I.A.No.400 of 2010 to scrape the evidence of P.W.1 claiming that P.W.1 can depose the facts on which he has personal knowledge and he cannot depose anything without a personal knowledge. This petition was dismissed against which the revision petitioner preferred an revision in C.R.P.(MD)No.897 of 2011.

14.It is seen that in the Civil Revision Petition, this Court has made an observation that the evidence of P.W.1 can be entertained as an evidence in his individual capacity only and not that of a power agent. It is seen that subsequently the fourth defendant Nagammal died. The 39th respondent herein is one of the legal heir of the said Nagammal. The plaintiff has filed the petition in I.A.No.597 of 2016 to implead himself as the legal heir of the 4th defendant. He filed a petition to implead Venkatan, Meenakshi and Periyasamy as defendants 43, 44 and 45 and the learned Judge has ordered that the said Palanisamy is to be added as the 46th defendant. The Court also permit him to act as a power agent and as well as



the second plaintiff in his individual capacity. In I.A.No.597 of 2016, the 39th respondent herein claim his right over the property by way of will dated 06.05.2016 which was executed by his mother Nagammal, who was the fourth defendant in the suit.

15.It is true that in a partition suit, both the parties can be treated as plaintiffs. In a partition suit, when a plaintiff abandoned the suit, the defendant can transpose as a plaintiff as per Order I Rule 10 of CPC. But in this case, the trial court passed an order permitting the 39th respondent herein to appear as the power agent of the original plaintiff and to appear as the second plaintiff and to appear as 46th respondent. So there is an apparent error in the order. Because a person cannot appear in three different ways in a single suit.

16.The claim of the 39th respondent herein is based on a Will dated 06.05.2016, it was executed by the fourth defendant. The status of the second plaintiff is different from the status of power of attorney of the then sole plaintiff. The plaintiff died intestate without any class 1 legal heirs. The power of attorney ceases to exist further. Though the order to implead the 39th respondent as the 46th respondent was passed by the trial Court, the 39th respondent did not come forward to implead himself as the 46th defendant. The claim of the 39th respondent in I.A.No.597 of 2016 is the Will executed by the fourth defendant. Now the entire property belongs to one link of the family that is the family of Thotiyappa Goundar. The 39th respondent is the grandson of Thotiyappa Goundar through the fourth defendant.

17.The suit is of the year 1999 and is still pending. So many amendments were made in the plaint and so many persons were impleaded as defendants. The 39th respondent cannot be impleaded as the second plaintiff, as there is an order to implead him as the 46th defendant. As such nothing survives for adjudications. If at all the 46th defendant/39th respondent has any individual right over the property. He is at liberty to file a fresh suit.

18.With the above observation, this Civil Revision Petition is allowed and the order passed in I.A.No.597 of 2016 in O.S.No.400 of 2011 dated 29.06.2017 on the file of the learned Additional Sub Judge, Dindigul is set aside. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

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Sub Assistant Registrar (CS)



The Additional Sub Judge,
Dindigul.

+2 CC to Mr.A.HARIHARAN, Advocate (SR-4750[F] dated 05/02/2020)
+1 CC to Mr.J.ANANDA VALLI, Advocate (SR-4790[F] dated 05/02/2020)

C.R.P. (MD)No.1546 of 2019
05.02.2020

MK (14.02.2020) 7P 5C