

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2021

C O R A M

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

C.R.P.No.1166 of 2018
and C.M.P.No.6016 of 2018

Annammal (died)

1.Valli

W/o.Boopathi

2.Uma Shankar

S/o.Late Arunachalam

3.Anitha

D/o.Late Arunachalam

4.Leela

W/o.Chenna Krishnan

5.Prema

W/o.Dharmalingam

6.P.Ravindran

S/o.Perumal

7.Sivagami

W/o.Arokiyaraj

8.P.Vadivel

S/o.Perumal

9.G.Ragubathy

H/o.Bharathi

1.Jayaleela

W/o.Appasamy

2.Shantha

W/o.Murugan

3.Rajesh

S/o.Appasamy

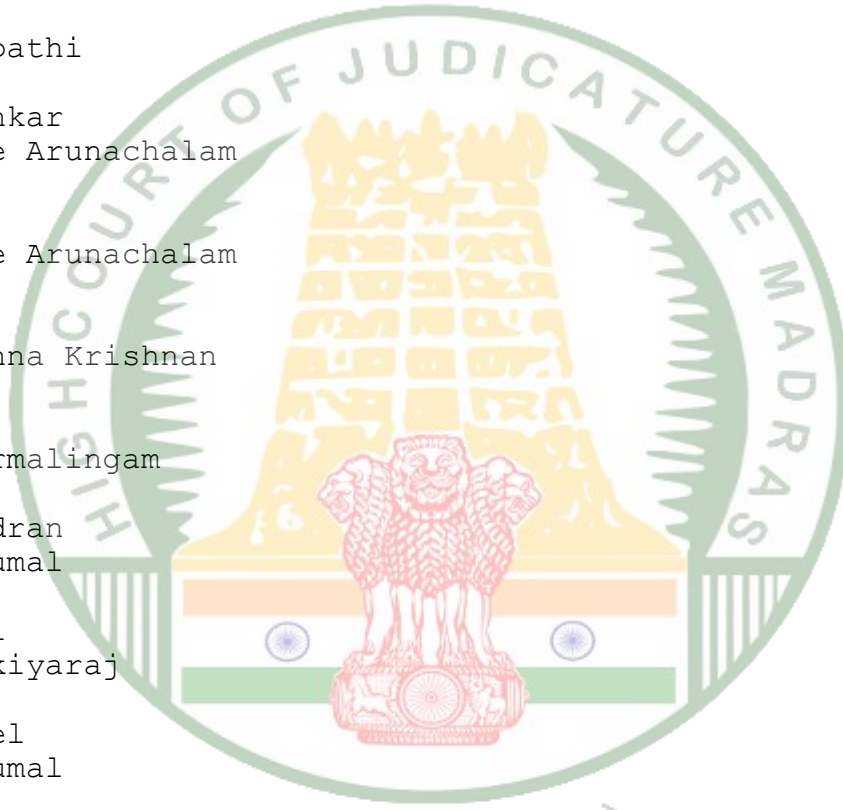
4.Kalpana

D/o.Murugan

... Petitioners

Vs

... Respondents



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(Cause title accepted vide court order dt.12/03/2018 in CMP.No.4793/18)

Prayer:

Civil Revision Petition filed under Article 227 of Constitution of India, prayed to set aside the order and decretal order passed in I.A.No.270/217 in O.S.No.16/2012 dated 08.11.2017 on the file of the District Munsif Court, Arakkonam, Vellore District.

For Petitioners : Mrs.S.Thamizharasi

For Respondents : No Appearance

ORDER

This Civil Revision Petition has been filed challenging the order dated 08.11.2017 made in I.A.No.270/217 in O.S.No.16/2012 on the file of the District Munsif Court, Arakkonam, Vellore District.

2. When the matter was taken up for hearing on 05.02.2021 and 11.02.2021, none appeared on behalf of the respondents. Hence, Registry was directed to list the case under the caption ''for orders'' on 15.02.2021. Today (i.e on 15.02.2021) also none appeared on behalf of the respondents. Therefore, the matter is taken up for final disposal.

3. Heard the learned counsel for the petitioners and perused the materials available on record.

4. The crux of the issue in the present case is whether the dismissal of the impleading petition filed by the petitioner/plaintiff is just and fair. According to the petitioners, the fact that the Will was executed with respect to suit schedule properties in favour of the defendants 1 and 2 and subsequently, the suit schedule properties have been settled in favour of the proposed respondents/son and daughter of the defendants 1 and 2, has come to the knowledge of the petitioners after the perusal of the written statement filed by the respondents. After knowing the same, the petitioners moved the petition to implead the proposed respondents. However, the Court below dismissed the same stating that the the impleading petition was filed to drag the suit proceedings filed belatedly and further as long as the settler is alive, the proposed respondent need not be impleaded. Hence, the petitioner preferred the present petition.

5. It would be appropriate to refer to a judgement of this Court in Kasthuri Vs. Iyyamperumal reported in (2003) Volume II LW 547, wherein in Paragraph 13 it is stated as follows:

'Now the question is who is necessary and proper party to the suit. This is answered by the Supreme Court in Ramesh Hiranand Kundanand Vs. Municipal Corporation of Greater Bombay and others 1992 T.N.L.J (S.C.) P-14. The Supreme Court has dealt with Order 1 Rule 10(2) and had observed that "Sub-Rule(2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. The question of impleadment of a party has to be decided on the touch stone of Order I, Rule 10 which provides that only a necessary or a proper party may be added. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case." '

6. In case, if the Will is proved, certainly the interest of the proposed respondent is not going to be affected and the suit will be dismissed. If the Will is disproved then the partition suit is going to be decreed, in such case, the interest of the proposed respondents is certainly going to be affected. In the event of disproving the Will, necessarily the person who is in the possession by virtue of the settlement needs to be added as parties to the suit and no justice can be rendered in their absence. Though in the present case, there is delay on the part of the petitioners in moving the application, in the interest of the justice and in order to avoid multiplicity of proceedings, this Court is of the view that it would be appropriate to allow the impleading application, thereby impleading the proposed respondents as defendants in the suit.

7. In view of the above finding and settled law, this Court is of the opinion that it would be appropriate to set aside the order passed by the Court below. Accordingly, the petitioners are permitted to implead the proposed respondents as defendants in the suit. The District Judge, District Munsif Court, Arakkonam, Vellore, is directed to make suitable amendment within two weeks from the date of receipt of a copy of this order and dispose of the suit within a period of six months thereafter.

8. With the above direction, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

mk

To

The District Munsif Court,
Arakkonam, Vellore District.

+1cc ti Mrs.S.Thamizharasi, Advocate SR.8736

C.R.P.No.1166 of 2018
and C.M.P.No.6016 of 2018

PA (CO)
CB (24/03/2021)



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