

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No.690 of 2018 and
CMP.No.3598 of 2018

K.Murugeshwaran

..Petitioner

Vs.

1.N.Tamilselvi
2.Latha
3.Gopalsamy
4.Manonmani
5.Govindammal

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 27.10.2017 in IA.No.366 of 2017 in OS.No.638 of 2012 on the file of the V Additional District Judge's Court, Coimbatore.

For Petitioner : Mr.C.R.Prasanan

For Respondents

For R1 to 3 : Mr.D.Lakshmipathy

For R4 : Mr.R.Marudhachalamurthy

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 27.10.2017 passed in IA.No.366 of 2017 in OS.No.638 of 2012 on the file of the V Additional District Judge's Court, Coimbatore, thereby allowing the petition to implead the fifth respondent herein as proposed defendant.

2. The respondents 1 to 3 are the plaintiffs and the petitioner is the first defendant. The respondents 1 to 3 filed suit for partition. After examining the defendants' side witness, the petitioner herein produced a Will stating that the said Thangavelu married one woman i.e. the proposed third defendant. Therefore, the Will produced by the petitioner is forged one and as such the respondents 1 to 3 filed petition to implead the proposed party as one of the defendant in the suit.

3. The learned counsel for the petitioner would submit that the proposed party is the widow of Thangavelu. However, Viswanathan had already executed Will dated 24.05.2001 along with the petitioner. So it is a joint Will duly propounded on the death of the said Thangavelu. In fact, the proposed party also did not challenge the said Will. Therefore, the respondents 1 to 3 herein have no locus to question the Will produced by the petitioner.

4. If the proposed party were the wife of the deceased, she would become the Class-I legal heir of the said Thangavelu and would exclude the Class-II legal heirs in respect of his properties in the absence of any testamentary disposition. However, the proposed party remained exparte. The parties in the suit are claiming right and share

in respect of the properties belong to the said Thangavelu and if the proposed party is impleaded as wife of the said Thangavelu, the parties would not have any claim in the suit property. Though it is claimed by the petitioner that the proposed defendant had separated about 40 years ago, no material before the trial court. Further, the petitioner also admitted that the proposed defendant is the wife of the said Thangavelu and as such the presence of the proposed party would be certainly necessary for proper and effective adjudication. Therefore, this Court finds no infirmity or illegality in the order passed by the court below.

5. Accordingly, this civil revision petition is dismissed. However, the petitioner is always at liberty to file petition for rejection of plaint in the manner known to law, if so advised. Consequently, connected miscellaneous petition is closed. No order as to costs.

सत्यमेव जयते

23.04.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No
lok

WEB COPY

G.K.ILANTHIRAIYAN,J.

lok

To

The V Additional District Judge,
Coimbatore.



CRP.PD.No.690 of 2018

WEB COPY

23.04.2021