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C.R.P. (PD) .No.2921 of 20



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.2921 of 2017

and

C.M.P.No.13784 of 2017

1.R.Neela (died)

2.M.Murugan

3.M.Parimala

4.R.Sabarinathan

5.T.Meenakshi

.. Petitioners

(Petitioners 3 & 4 brought on record as LR's of the deceased 1st petitioner viz., R.Neela and 2nd respondent viz., T.Meenakshi transposed as 5th petitioner vide order of this Court dated 01.10.2021 made in C.M.P. No.15186 of 2021 in C.R.P.(PD).No.2921 of 2017)

Vs.

S.Sulochana

.. Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 04.07.2017 made in I.A.No.164 of 2017 in O.S.No.143 of 2013 on the file of the Additional District Munsif Court, Chengam, Tiruvannamalai District.



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For Petitioners : Mr.A.Srinivasan

For Respondent : Ms.S.Sathiya
for Mr.P.S.Kothandaraman

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).)

This Civil Revision Petition is filed to set aside the fair and decretal order dated 04.07.2017 made in I.A.No.164 of 2017 in O.S.No.143 of 2013 on the file of the Additional District Munsif Court, Chengam, Tiruvannamalai District.

2.The petitioners 1 & 2 are defendants and the respondent is the plaintiff in the suit in O.S.No.143 of 2013. The respondent filed the said suit for partition against the petitioners 1 & 2. The petitioners 1& 2 filed written statement on 22.10.2013. Trial commenced. When the suit was posted for cross examination of P.W.1, the respondent filed I.A.No.164 of 2017 to implead the 5th petitioner herein as 3rd defendant in the suit. According to respondent, the suit property is an ancestral property and petitioners 1 & 2 and respondent are brother and sisters and they have equal share after death of their father viz., Munusamy Udayar. The 2nd petitioner married elder daughter of 1st petitioner. Without knowledge of respondent, the 2nd petitioner



constructed a house on the northern side of the suit property. Further, the 2nd petitioner sold 3 cents of suit property to the 5th petitioner, who is the younger daughter of 1st petitioner and sister-in-law of 2nd petitioner. Hence, the 5th petitioner is necessary party to decide the issue in the suit. The 2nd petitioner filed counter affidavit and opposed the said application. According to petitioners, the sale in favour of the 5th petitioner was by sale deed dated 08.11.2010. The respondent knew about the sale and she made averments in the plaint. The petitioners 1 & 2 also filed written statement on 22.10.2013, stating about the sale in favour of the 5th petitioner and construction of house by 5th petitioner and the fact that she is living there. The respondent did not implead the 5th petitioner at the time of filing of the suit as well as within three years from the date of filing of the written statement. Only after commencement of Trial, the respondent filed I.A. and prayed for dismissal of I.A.No.164 of 2017.

3.The learned Judge considering the averments in the affidavit, counter affidavit and provisions of Order I Rule 10(2), held that 5th petitioner is necessary to decide the issue in the suit and a necessary party can be impleaded at any stage of the suit and allowed the I.A.No.164 of 2017, but ordered cost of Rs.500/- (Rupees Five Hundred Only) for the delay in filing



the said I.A.No.164 of 2017.

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4. Against the said order dated 04.07.2017 made in I.A.No.164 of 2017, the petitioners 1 & 2 have come out with the present Civil Revision Petition.

5. Pending Civil Revision Petition, the 1st petitioner died and petitioners 3 & 4 were brought on record as LR's of the deceased 1st petitioner viz., R.Neela and 2nd respondent viz., T.Meenakshi transposed as 5th petitioner vide order of this Court dated 01.10.2021 made in C.M.P. No.15186 of 2021 in C.R.P.(PD).No.2921 of 2017.

6. The learned counsel appearing for the petitioners reiterated the averments made in the counter affidavit and further submitted that the learned Judge misinterpreted the provisions of order I Rule 10 (2) C.P.C. The respondent has filed the said I.A.No.164 of 2017 belatedly, which she ought to have filed within three years from the date of filing the written statement and submitted that the claim of the respondent is barred by limitation and prayed for setting aside the order of the learned Judge and allowing the Civil Revision Petition. In support of his contention, the learned counsel appearing for the petitioner relied on the following judgments:



(i) Judgment of Hon'ble Allahabad High Court reported in ***AIR 1984***

Allahabad 143, [Kisan Co-operative Sugar Factory Ltd., Vs. M/s. Rajendra Paper Mills and others];

(ii) Order of this Court reported in ***(2005) 4 MLJ 4, [Manonmaniammal and others Vs. Dr.Duraikannau and others]*** and

(iii) Judgment of the Hon'ble Apex Court reported in ***(2010) 7 SCC 417, [Mumbai International Airport Pvt. Ltd., Vs. Regency Convention Centre and Hotels Pvt. Ltd., and others]***.

7. The learned counsel appearing for the respondent made averments in support of the order of the learned Judge and submitted that suit filed by the respondent is for partition and hence, implementation in a suit for partition cannot come to an end till the final decree is passed. The learned Judge considered the provisions of Order I Rule 10 (2) and permitted the respondent to implead the 5th petitioner as 3rd defendant in the suit and relied on the order of this Court reported in ***1970 (1) MLJ 243, [Swayamprakasam alias Chidambaranathan Vs. R.Vijayarangam]*** and prayed for dismissal of the Civil Revision Petition.



8. Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondent and perused the entire materials on record.

9. From the materials on record, it is seen that the petitioners 1 & 2 and respondent are brother and sisters. The respondent has filed the suit for partition claiming share in the suit property on the ground that suit property is ancestral property after death of their father viz., Munusamy Udayar, the petitioners 1 & 2 and the respondent have equal share. The 2nd petitioner sold the portion of the suit property measuring 3 cents to the 5th petitioner, who is the younger daughter of 1st petitioner. In a suit for partition, all the persons interested in the properties must be made as parties. As per the provisions of Order I Rule 10 (2) C.P.C., the Court has power to implead a necessary party and strike off unnecessary party at any stage of the suit.

10. From the materials on record it is seen that the 2nd petitioner sold a portion of the suit property measuring 3 cents to the 5th petitioner. In view of the said sale, the 5th petitioner is a necessary party to decide the issue of partition, especially if the respondent succeeds in the suit with regard to allotment of share to the parties. The learned Judge considering the materials



placed before him, held that 5th petitioner is necessary party to decide the issue and by following the principles laid down in Order I Rule 10 (2) of C.P.C., allowed the I.A.No.164 of 2017 and impleaded the 5th petitioner as 3rd defendant in the suit. In view of the fact that respondent filed the said I.A.No.164 of 2017 after delay, the learned Judge imposed cost of Rs.500/- (Rupees Five Hundred Only) to the respondent. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.

11.In the result, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

25.10.2021

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Index : Yes / No
Internet : Yes / No

To

The learned Additional District Munsif,
Chengam,
Tiruvannamalai District.



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V.M.VELUMANI, J.
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