



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction

Wednesday, the Twenty Fourth day of February Two Thousand and
Twenty One

WEB COPY

PRESENT

The Hon`ble Mr.Justice R.SUBRAMANIAN

CMP(MD) . No.1126 of 2020
in
SA(MD) .No.467 of 2019

1 Meenachi

2 Padmavathi

3 Rajalekshmi (Minor) ... Petitioners/Appellants

(The 3rd appellant Minor rep.by through the natural guardian the
mother 1st Appellant).

Vs

1 Rajalekshmi

2 Packialekshmi ...Respondents1&2/ Respondents1&2

3 L.Nallaperumal ...Proposed Party/ 3rd Respondent

Prayer in CMP(MD) .NO.1126 of 2020 in SA(MD) .NO.467 of 2019 :-

The Civil Miscellaneous Petition is filed under Order 1
Rule 10(2) & 151 of C.P.C.to implead L.Nallaperumal
S/o.Lakshmanaperumal, No.4, Nallaperumal Illam, Kalaimagal Street,
South of SLB School, Saanthanchettivilai, Nagercoil, Kanniyakumari
District as Additional 3rd respondent in the second appeal.

Prayer in SA(MD) .No.467 of 2019:-

The Second Appeal is filed under section
100 of C.P.C. Against the Judgment and decree passed in A.S.No.74 of
2014 dated 01/04/2019 on the file of the Principal District Judge,
Kanniyakumari reversing the Judgment and decree passed in O.S.No.74
of 2007 dated 19/07/2018 on the file of Principal Sub Court,
Nagercoil.

ORDER:- This Civil Miscellaneous Petition coming on for orders
on this day and upon perusing the petition and the affidavit filed
in support thereof and upon hearing the arguments of



Mr.N.Sivakumar, Advocate for the Petitioner and of Mr.V.Meenakshi Sundaram for Mr.R.Murugan, Advocate for the third Respondent, this Court made the following order:

This petition has been filed seeking to implead the proposed party as a party to the suit in O.S.No.74 of 2007. The suit was laid by the appellants seeking partition and separate possession of their 1/3rd share in the suit properties, consequent upon a family arrangement dated 30.04.2001. The suit was laid against the mother-in-law of the first plaintiff and paternal grand mother of the plaintiffs 2 & 3 and her daughter. The plaintiffs are the children of one Chithambarakumar, son of Rajalakshmi, the first defendant in the suit. The second defendant is the sister of Chithambarakumar.

2.According to the plaintiffs, even during the life time of Chithambarakumar, by the family arrangement, there was an agreement to divide properties three equal shares. The trial Court believed the family arrangement and decreed the suit.

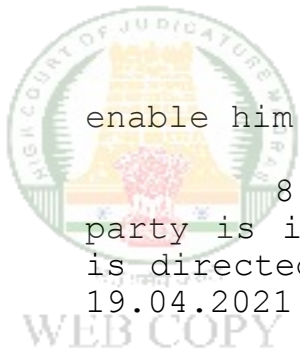
3.The lower Appellate Court, however, reversed the said judgment and dismissed the suit disbelieving the family arrangement.

4.This application has been filed seeking to implead the third respondent herein as a party defendant in the suit, since the plaintiffs have now to know that the first defendant had alienated the property infavour of the proposed party, claiming under the Will, said to have been executed by her mother.

5.The proposed party has filed a counter, contending that the Sale Deed is dated 05.09.2005 even prior to the institution of the Suit and hence if he is impleaded now, the rights that had accrued to him will be defeated. It is also claimed that the property being one belonging to the mother of the first defendant, the son or daughter of the first defendant will not get any right over the property. It should also to be mentioned here, the first defendant remained exparte and the second defendant, who contested the suit did not choose to disclose the alienation throughout the proceedings.

6.Considering the fact that the Second Appeal is pending and it is based on a family arrangement dated 30.04.2001, the proposed party, who is the purchaser is a necessary party to the suit as his rights would be affected, if the appeal is decided in favour of the appellants.

7.Mr.V.Meenakshisundaram, the learned counsel for the proposed party would however submit that his non-impleading in the suit is fatal to the very suit and therefore that defect could not be cured by his impleading in the Appeal. Any right that had accrued to the proposed party, will stand protected and he is impleaded for



enable him to defend the suit and protect his interest.

8. Therefore, this application stands allowed. The proposed party is impleaded as the third respondent in the Appeal. Registry is directed to carry out necessary amendment and post the Appeal on 19.04.2021.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

+ 1 cc to Mr.N.Sivakumar, Advocate, S.R.NO.2579

ORDER DATED : 24/02/2021

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C.D.PURPOSE

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CMP(MD) . No.1126 of 2020

in

SA(MD) .NO.467 of 2019

Giving direction and etc.
as stated within.

RD(14.06.2022) 3P 2C