



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.08.2021

(Reserved on 30.03.2021)

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(MD)No.1123 of 2020

and

CMP(MD)No.7234 of 2020

K.N.Allahbux

Represented by Power of Attorney

A.Mohamed Safiudeen

... Petitioner / 1st defendant

vs.

1)K.N.Dawood Mohideen

2)K.N.Abdul Hai

... Respondents 1 &2/
Plaintiffs

3)K.N.Abdul Ali

4)Habib Gani

5)Asia Mariam

6)Sammal

7)K.Alagar

8)Alimuthu Nisha (died)

... Respondents 3 to 8/
Defendants 2 to 7

9)D.Navaneetha Krishnan

... 9th respondent /
Proposed party

10)M.Asraj Ali

11)Jannath Kamila

12)M.Mohammed Siddique

... Respondents 10 to 12/
LRs of deceased 8th respondent

Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 05.03.2020 in I.A.No.98/2017 in O.S.No.62/2011 on the file of the Additional District Judge, Dindigul.

For Petitioner	: Mr.H.Lakshmi Shankar
For R1 & R2	: Mr.T.Balaji
For R3	: Mr.Na.Palaniyandi
For R6	: Mr.S.Natarajan
For R9	: Mr.V.Meenakshi Sundaram for Mr.A.Hariharan
For R7, R10 & R11	: No appearance

**ORDER**

This petition has been filed by the revision petitioner / first defendant against the order, dated 05.03.2020, passed by the Court below in I.A.No.98/2017 in O.S.No.62/2011 dismissing the petition filed for impleading the tenant in the suit.

2. The respondents 1 and 2 herein as plaintiffs have filed the suit in O.S.No.62 of 2011 for partition against their brothers and sisters viz., revision petitioner/1st defendant and the respondents 3 to 8/defendants 2 to 7. During the pendency of the suit, the revision petitioner/1st defendant filed an application in I.A.No.98 of 2017 seeking to implead the 9th respondent herein, who is a tenant under the respondents 1 and 2/ plaintiffs in 'B' schedule property. The Court below dismissed the said petition. Aggrieved by the same, the petitioner has come up with this revision petition.

3. The learned counsel appearing for the revision petitioner/first defendant submitted that the plaintiffs claimed partition of suit schedule properties and they filed an injunction application along with the suit in respect of 'B' and 'C' schedule properties in I.A.No.71/2011. Subsequently, the revision petitioner filed a petition to reject the plaint which was dismissed, against which, he filed CRP(MD)No.2575/2015 before this Court, wherein, interim stay was granted. Taking advantage of the same, the respondents 1 & 2 / plaintiffs started putting up construction in 'B' schedule property from May 2016 and therefore, the petitioner filed an injunction application not to put up construction, but the construction was completed by the plaintiffs. The learned counsel for the petitioner would further submit that the respondents 1 & 2 / plaintiffs rented out illegally constructed building to the 9th respondent/proposed party during July, 2016 on receipt of Rs.7 lakhs as advance and for a monthly rent of Rs.7,000/-. The proposed party, who was inducted as tenant in the illegally constructed building, has every possibility to claim right to be in possession in the joint family property which is the subject matter of partition suit and when such substantial right is sought to be created in favour of the third party/proposed party, the right of other sharers in the joint family property will be put into prejudice. Therefore, the petitioner filed the present impleading petition to implead the proposed party as 8th defendant in the suit. The Court below holding that no relief is claimed in the suit against the proposed party and he is in no way connected with the suit property, dismissed the impleading petition by the impugned order dated 05.03.2020, against which, this revision petition is filed.

4. The learned counsel for the petitioner / 1st defendant would further submit that the trial Court failed to note that creating a leasehold right by putting up a new construction in 'B' schedule



property during the pendency of the suit, is a substantial alteration of status quo and therefore, the lessee is a necessary and proper party for final and complete adjudication of the suit. He would further state that the proposed party did not contest or oppose the impleading petition and therefore, the trial Court ought to have allowed the impleading petition. Further, the trial Court, without considering the above aspects, has erroneously dismissed the impleading petition, relying on the judgment reported in 2017 (4) LW 345. It is further submitted that the suit properties are undivided and both the parties are liable to render accounts in respect of their dealings, so, the lease created pending suit has to be taken into consideration while passing the decree, for which, impleadment of the proposed party is necessary. Moreover, the validity or invalidity of the lease created in favour of the proposed party will have consequences during the outcome of the suit and for giving objections, the proposed party has to be necessarily impleaded. Thus, he would pray for setting aside the impugned order.

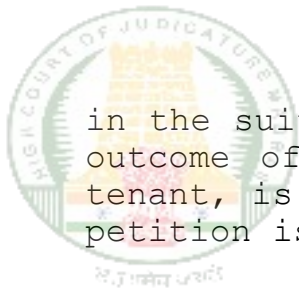
5.The learned counsel for the respondents 1 & 2 / plaintiffs would state that the proposed party to be impleaded is admittedly a tenant and he is neither a necessary nor a proper party for deciding the entitlement of right and quantum of share to each of the parties to the suit who are legal heirs. The tenant bound by the result of the suit. If for any reason, the tenant vacates and another tenant is inducted, again the question of impleadment will arise and it will not lead to finality of the litigation and it is only an attempt to drag on the proceedings. Thus, he would state that the trial Court has rightly dismissed the impleading petition and therefore, the interference of this Court is not necessary.

6.The learned counsel appearing for the 9th respondent reiterated the submission of the learned counsel appearing for the respondents 1 and 2/plaintiff.

7.Heard the learned counsel appearing for the parties and perused the materials available on records.

8.Whether a tenant is a necessary party in a partition suit had been put to acid test in **Kamalesan vs. R.Pushpakaran** reported in **2017 (7) MLJ 781**, wherein a learned Single Judge of this Court has categorically held that a tenant is neither a necessary nor a proper party in a partition suit.

9.The main contention of the learned counsel for the petitioner/first defendant is that in the event of the partition suit resulting in allotment of the particular portion in possession of the tenant to any other sharer than the plaintiffs, then the tenant will file claim petition or obstruction petition in the execution stage and protract the litigation without handing over the possession and therefore, the tenant is necessarily to be impleaded



in the suit. According to the respondents 1 & 2 / Plaintiffs, the outcome of the suit will bind the proposed party and he being a tenant, is neither a necessary nor a proper party and the impleading petition is filed only to drag on the proceedings.

10. Admittedly, in this case, during the pendency of the suit for partition, the respondents 1 and 2/ plaintiffs construed the building in B schedule property, obtained property tax receipt in their name and let out the said building to the proposed party / tenant. Every transfer of an immovable property *pendente lite* is only subject to the outcome of the litigation in which the property is the subject matter. In the case of Subramonia Iyer v. Subbayya Mudaliar, reported in A.I.R. 1961 Kerala 335, it was categorically held by the Kerla High Court that Section 52 of the Transfer of Property Act applied to the suit for partition and a tenant inducted by a party, during the pendency of the that suit, is bound by the decree. Therefore, the assumption of the learned counsel for the petitioner cannot be countenanced. It appears that only to drag on the proceedings, he filed the petition. In view of the above, this Court is inclined to dismiss this revision petition. It is seen that the suit is of the year 2011 and it is also represented by the learned counsel for the respondents 1 and 2/plaintiffs that since the parties are aged persons, a direction may be issued for early disposal of the suit. Therefore, learned Judge is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order.

11. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

bala

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.



To

1.The Additional District Judge,
Dindigul.

+1 CC to M/s.NA.PALANIYANDI, Advocate (SR-25122[F] dated 03/08/2021

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-25130[F] dated
03/08/2021)

+1 CC to M/s.A.SRINIVASAN, Advocate (SR-25241[F] dated 04/08/2021)

PRE-DELIVERY ORDER MADE IN
CRP (MD) No.1123 of 2020

LS (CO)

TR(06.08.2021) 5P 5C