



WEB COPY

CRP(PD)(MD).No.1829 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.08.2021

Pronounced on : 29.10.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRP(PD) (MD) .No.1829 of 2019

and

CMP(MD)No.9443 of 2019

P.K.Abdul Khadar

: Petitioner/Petitioner/3rd Party

Vs.

1.P.A.Jannath Ganni

2.P.A.Noorjahan (died) : Respondents 1 & 2/Respondents 1 & 2/
Plaintiffs

3.P.S.Jamruth Begam

4.Hajiran Beevi

5.Ameer Beevi

6.Shahul Hameed

7.Nihara

8.Rajendran : Respondents 3 to 8 /Respondents 3 to 8/
Defendants 1 to 6

(Memo dated 02.09.2021 is recorded as second respondent died and R1, who is already on record represents the estate of the 2nd respondent vide Court order dated 02.09.2021 made in CRP(MD)No.1829 of 2019)

(R3 is recognized as power of attorney agent of the respondents 4 to 7 vide Court order dated 02.09.2021 made in CRP(MD)No.1829 of 2019 & CRP(MD)No.6950 of 2021)

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the impugned fair and decretal order passed by the learned Additional Subordinate Court, Kumbakonam, dated 05.09.2019 in I.A.No.234 of 2016 in O.S.No.19 of 1996.

For Petitioner : Mr.S.Meenakshi Sundaram, Senior Counsel,
for Mr. N.Dilip Kumar

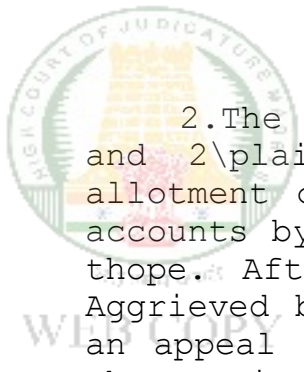
For Respondents : Mr.M.Saravanan, for Caveator R1
and R3 to R7.

: Mr.P.Vinoth,
for Mr.N.E.Ashok Kumar for R8.

ORDER

This Civil Revision is directed against the order passed in I.A.No.234 of 2016 in O.S.No.19 of 1996, dated 05.09.2019 on the file of the Additional Subordinate Court, Kumbakonam, dismissing the petition filed under Order 1 Rule 10 of the Code of Civil Procedure.

<https://hcservices.ecourts.gov.in/hcservices/>



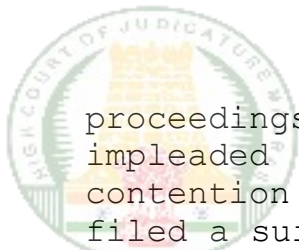
2.The revision petitioner is a third party. The respondents 1 and 2\plaintiffs have filed the above suit for partition and allotment of 1\2 share in the suit properties and for rendition of accounts by the 6th defendant for the income derived from the coconut thope. After trial, preliminary decree was passed on 08.07.2003. Aggrieved by the preliminary decree, the 6th defendant has preferred an appeal in A.S.No.336 of 2004 before this Court. Pending appeal, the parties have entered into compromise and on the basis of the said compromise, the decree passed by the trial Court was modified vide judgment dated 21.01.2014. It is not in dispute that meanwhile, the plaintiffs have filed a petition for passing of final decree in I.A.No.2 of 2005 and the same is pending. Pending final decree petition, the revision petitioner\third party has filed the petition in I.A.No.234 of 2016 under Order 1 Rule 10 CPC, seeking orders to implead him as 7th defendant in the suit. The learned Subordinate Judge, after enquiry, has passed the impugned order on 05.09.2019, dismissing the said petition. Aggrieved by the said order of dismissal, the third party has come forward with the present revision.

3.Admittedly, the suit properties were owned by one Ameena Beevi. The relationship not in dispute are that Ameena Beevi had married one Abdul Karim and had a son by name Pasala kamal Batcha and he married Davood Ammal and that the revision petitioner\third party Abdul Khadar is the son of the said Pasala Kamal Batcha and Dawood Ammal. After the death of the said Abdul Karim, Ameena Beevi had married Abdul Karim's brother sheik Dawood and had three children by name Jannath Gani, Noor Jahan (plaintiffs 1 and 2) and Sulthan Batcha, that Sulthan Batcha died living behind his widow Jamrath Begam\the first defendant and four children, the defendants 2 to 5.

4. The case of the revision petitioner\third party is that the proposed party being the grand son of original owner Ameena Beevi, is also entitled to get a share in the property of Ameena Beevi as he was alive on the date of the death of the said Ameena Beevi, that the proposed party is entitled to get 1\9 share in the suit properties and that therefore, the proposed party is a proper and necessary party to be implead in the above suit proceedings.

5.The defence of the respondents is that the father of the proposed party Pasala Kamal Batcha had predeceased his mother Ameena Beevi, that Ameena Beevi had died in 1991 leaving behind her three children\the plaintiffs 1 and 2 and the deceased Kamal Batcha as her legal heirs to succeed her properties and that the proposed party and his mother, who are the legal heirs of the predeceased son are not entitled to inherit the property of Ameena Beevi.

6. It is their further contention that the proposed party is a local resident and aware of the proceedings pending between the parties and that is why, he did not implead him in the suit



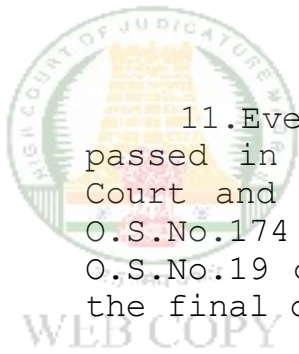
proceedings and that therefore, he cannot be allowed to get himself impleaded in the final decree proceedings. It is the further contention of the respondents that the proposed party has already filed a suit in O.S.No.174 of 2016, against the respondents herein on the file of the Subordinate Court, Kumbakonam, claiming the relief of declaration that the preliminary decree passed in O.S.No.19 of 1996, dated 08.07.2003 on the file of the Additional Subordinate Court, Kumbakonam, is not valid and is unexecutable and for permanent injunction restraining the defendants therein from alienating or encumbering the properties using the decree passed in O.S.No.19 of 1996 and that the said suit is pending.

7.It is also not in dispute that the first plaintiff by alleging that the revision petitioner's mother Dawood Ammal, without any right, has executed a settlement deed in favour of her son, the revision petitioner vide settlement deed, dated 26.05.2016, has filed a suit in O.S.No.452 of 2019 against the revision petitioner and other respondents herein on the file of the Principal District Munsif, Kumbakonam to declare that the above said settlement deed dated 26.05.2016 is void ab initio and not binding on her and for mandatory injunction and that the said suit is also pending.

8.No doubt, the final decree proceedings are to be considered as continuation of the suit proceedings, but rights and shares of parties concerned get determined in the preliminary decree proceedings and the final proceedings are only for actual division of the properties and allotment of the shares to the parties in pursuance of the preliminary decree.

9.As rightly contended by the learned counsel for the respondent, the question of deciding the rights of the parties and their entitlement for the shares in the properties cannot be gone into, in the final decree proceedings. No doubt, the competent Civil Court can pass any number of supplemental preliminary decrees. In the case on hand, as already pointed out, in the appeal, this Court has passed a decree in terms of the Compromise Memo, modifying the preliminary decree passed by the trial Court and this Court has also directed the parties to comply with certain terms of the decree passed by this Court in the final decree proceedings.

10.As rightly contented by the learned counsel for the respondents, since the rights and shares of the parties were already got determined, there is absolutely no need or necessity to implead the proposed party, as nothing survives to be decided in the presence of the proposed party. More importantly, as already pointed out, the proposed party has already filed the suit to declare the decree passed in O.S.No.19 of 1996 as null and void and is not binding on him and since the suit is now pending, the question of impleading him as 7th defendant in the above suit does not arise at all.



11. Even assuming for the arguments sake that the final decree is passed in I.A.No.2 of 2005 in terms of the decree passed by this Court and subsequently, the proposed party succeeds in the suit in O.S.No.174 of 2016 and thereby the preliminary decree passed in O.S.No.19 of 1996 was set aside, then subsequently and automatically the final decree passed will become ineffective.

12. Now turning to the merits of the claim put forth by the revision petitioner\proposed party, he has been claiming the right and shares over the suit property as the son of Dawood Ammal, who in turn claimed through her husband Pasala Kamal Bathca. As already pointed out, it is the specific defence of the respondents that since Pasala Kamal Bathca has predeceased his mother Ameena Beevi, the proposed parties cannot be considered as a legal heir, as per Muslim Law to inherit the property of the said Ameena Beevi and that since the children of the said Ameena Beevi through her second wife were very much alive on the date of death of Ameena Beevi, they are only entitled to inherit the property. At this juncture, it is necessary to refer the legal position with respect to inheritance in Muslim Law and the learned counsel for the respondents have relied on the following decisions :

(i) **1905 SCC Online PC 17 :**

Moolla Cassim bin Moola Ahmed Vs. Moolla Abdul Rahim and others :

" It is a well-known principle of Mohomedan law that if any of the children of a man die before the opening of the succession to his estate, leaving children behind, these grandchildren are entirely excluded from the inheritance by their uncles and aunts."

(ii) **AIR (38) 1951 Nagpore 327 :**

Abid Ali Khan and others Vs. Secretary of State and another :

" 52. Even though this is my view, it helps the plaintiffs very little. The reason for my saying this is that Amin Ali, the grandfather, of the plaintiffs, had predeceased Najaf Khan who held the estate without the co-partnership of any one. It is a well known principle of Mohammadan law that if any of the children of a man dies before the opening of the succession to his estate, leaving children behind, these grand children are entirely excluded from the inheritance by their uncles & aunts. This is what their Lordships of the P.C. Have stated in 'Moolla Cassim V. Moolla Abdul Rahim', 33 Cal 173 at p.178: (32 I A 177 PC). Clearly, therefore, the whole of Amin Ali's line is excluded from succession to the estate."

(iii) **ILR 2004 KAR 3599 :**

Smt. Ashabi Vs. Smt. Faziyabi And Others :

11. Therefore, what is clear to me is that a pre-



deceased son or a daughter gets excluded in view of the prior death in the given circumstances. This proposition is also considered by various Courts.

12. In AIR 1951 SC 327, the Court has ruled in para 52, as under.

"It is well known principle of Mohammadan law that if any of the children of a man dies before the opening of the succession to his estate, leaving children behind, these grand children are entirely excluded from the inheritance by their uncles and aunts. This is what their lordships of the P.C. have stated in MOOLLA CASSIM v. MOOLLA ABDUL RAHIM, 33 Cal 173 at Page 178. Clearly, therefore, the whole of Amin Ali's line is excluded from succession to the estate."

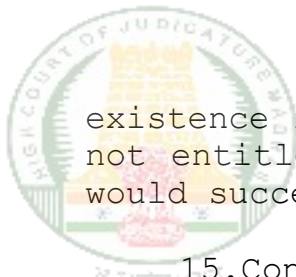
(iv) **2003 (3) ALD 528 :**

Md. Aliuddin Farooqui (Died) By ... vs Mohd. Karamath Hussain And Ors.

" From a reading of the above three Sections it is seen that if a Muslim dies inter state the property devolves on his heirs at the moment of his death and any of the predeceased legal heir or heirs are not entitled for a share. Under Section 56 of a heir of the deceased person got property on the death of his ancestor and if he dies before partition of the property the share vested remains intact and his heirs on his death. Hence to the extent of the claim of the defendants that the predeceased legal heirs of a Muslim person (i.e.,) Raza Hussain and Riaz Hussain who predeceased Late Mustafa Hussain cannot have a right over the property is sustainable and it is accordingly held in favour of the defendants."

13.It is pertinent to mention that under Muslim Law, right by birth is not recognized and the right of an heir-apparent or presumptive comes into existence for the first time on the death of the ancestor, and he is not entitled until then to any interest in the property to which he would succeed as an heir if he survived the ancestor.

14. It is well settled that only that relative can be an heir of the deceased who is alive at the moment of the latter's death. A person who died before the deceased cannot be his heir and as such a pre-deceased son or a daughter gets excluded in view of the prior death. The theory of representation is not recognised under the Mohammed Law and the interest of each heir is separate and distinct. To put it in other way, unlike Hindu Law, estate of a deceased Mohamedan if he has died intestate, devolve on his heirs at the moment of his death. Under the Mohammedan Law, birthright is not recognised. The right of an heir apparent or presumptive comes into



existence for the first time on the death of the ancestor, and he is not entitled until then to any interest in the property to which he would succeed as an heir if he survived the ancestor.

15. Considering the above and in the light of the Mohamedan Law above referred, the proposed party, who is the son of a predeceased son of Ammena Beevi or Dawood Ammal, who is the widow the deceased son of Ameena Beevi cannot claim any share in the property left behind by the said Ameena Beevi.

16. Viewing from any angle, the decision of the learned trial Judge in dismissing the impleading petition cannot be found fault with and consequently, this Court decides that the civil revision, which is devoid of merits, is liable to be dismissed.

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

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

das

To

1.The Additional Subordinate Judge,
Kumbakonam.

2.The Section Officer, (VR Section)
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-33465[F] dated 01/11/2021)

**CRP (PD) (MD) .No.1829 of 2019
29.10.2021**

KS (CO)

RS/JGB (17.11.2021) 6P 5C