



C.M.P.No.11516 of 2019

in

S.A.No.12 of 2017

P.T.ASHA, J.,

The petitioners have taken out the petition to implead them as Appellants 5 to 8 in the above second appeal in the place of deceased Jeevaraj Narson.

2. The brief facts are as follows:

The above second appeal arises from out of the judgment and decree in O.S.No.82 of 2008 on the file of the learned District Munsif, Ootacamund, the Nilgris District. The said suit has been filed by the 5th respondent in this petition for declaration that he is the permit holder of the suit property as he had succeeded to the same through Jayaraj Narson (his paternal grand father) and Jeevaraj Narson (his father) under the permit issue by the 1st defendant and for a consequential permanent injunction restraining the defendants, their men, agents or any one acting on their behalf from interfering in the plaintiff's peaceful possession and enjoyment of the suit schedule property. The suit has been filed against the District Collector/Tahsildar and the deceased appellant who was



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arrayed as third defendant. The plaintiff would submit that he and one J.N.Neethiyan, J.N.Charless were the sons and late Jeevaraj Narson and were Todas of the Nilgris District by birth.

3. The suit was decreed by a judgment and decree dated 16.08.2011 by the learned District Munsif, Ootacamund. Challenging the said judgment and decree, the 3rd defendant had filed A.S.No.2 of 2012 on the file of the Sub Court at Nilgris. The said appeal was dismissed by judgment and decree dated 24.11.2015 against which the present second appeal is filed.

4. The petitioners herein had now come forward to file this petition for impleading themselves as a party in the second appeal on the ground that the 6th respondent is not the son of Jeevaraj Narson and that it is only the petitioners herein who are his real wife and children.

5. The 6th respondent/plaintiff has filed the counter statement to the above application *inter alia* contending that the petitioners are absolute third parties and the application itself is steeped with malafides. The petitioners have been instigated by Appellants 1 to 4 in the above second



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appeal to take out the above application. The 1st petitioner Margret Jeevaraj is the 4th wife of the plaintiff's father Jeevaraj Narson.

6. The 6th respondent would submit that even during the life time of his mother (1st wife of Jeevaraj Narson) he had been in relationship with others including the 1st petitioner herein. She is not the legally wedded wife of the said Jeevaraj Narson and that apart, she is the sister of the 1st appellant and it is only at her instigation the petition has been filed. The plaintiff is the son of Jeevaraj Narson through his legally wedded wife and considering this fact, there is no necessity to implead the petitioners. In fact, the petitioners have not taken such a stand either during the pendency of the suit where the plaintiff's right has been declared or in the appeal in which the decree of the Trial Court has been confirmed.

7. The learned counsels have made the same submissions as contended in the petition and their counter.

8. The learned counsel for the 6th respondent had filed a typed set of papers containing certain documents, in which, there is an order



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passed by the Hon'ble First Bench of this Court in W.A.No.1553 of 2009 and W.P.No.18384 of 2008, wherein, this Court had directed the 3rd defendant (who was the appellant in the Writ Appeal) to file a substantive suit for declaration impleading the District Collector and the 6th respondent herein. There was also a direction issued to the 6th respondent to amend his suit to seek comprehensive to declare his right and was shown 3rd defendant as additional defendant.

9. It is seen that pursuant to the order, the 6th respondent had complied with the direction by seeking a declaration and also impleading the 3rd defendant Samuel Narson as party to the proceedings. However, the 3rd defendant had not taken similar steps in this regard. The documents would further show that the 6th respondent is in possession of the property and has been granted permission to construct on the said property. At no point of time, have the petitioners herein taken steps to get themselves impleaded in the proceedings when the matter was pending before the trial Court as well as Appellate Court or in the writ proceedings. As rightly pointed out by the respondent, the petition appears to be motivated. That apart, the suit in question has been filed for a declaration that the plaintiff is the permit holder and injunction and two



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Courts have recognised the plaintiff to be the son of the said Jeevaraj Narson, despite the fact that the faint defence has been taken by the said Samuel Narson denying that the 6th respondent is his cousin and declaring his right. If the petitioners are aggrieved then they should take appropriate legal proceedings to have themselves declared as legal representatives of the deceased Jeevaraj Narson.

10. For the aforesaid reasons, this Civil Miscellaneous Petition is dismissed.

15.11.2022

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