



CRP No.1639 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.11.2022

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

CRP.No.1639 of 2019
and CMP No.10724 of 2019

Rathinavel

.. Petitioner

Vs.

1. Maruvammal
2. Selvaraj
3. Selvam
4. Iatha
5. Marimuthu
6. Radha @ Lakshmi
7. Anjali
8. Ramesh
9. Sivagami

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 21.08.2018 passed in I.A.No.487/2017 in O.S.No.44/2016 by the Principal Subordinate Judge, Puducherry.

For Petitioner : Mr.S.Ramesh

for Mr.T.Balaji

For Respondents : Ms.S.Alagammai

for Mr.T.Thomas T.Jacob for R1 to R7

Mr.M.C.Swamy for R8 and R9.



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ORDER

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Challenging the order dated 21.08.2018 passed in I.A.No.487/2017 in O.S.No.44/2016 by the Principal Subordinate Judge, Puducherry, this Civil Revision Petition has been filed.

2. The petitioner herein is the third party in O.S.No.44/2016, while the respondents 1 to 7 are the plaintiffs, and the respondents 8 and 9 are the defendants in the above suit. The above suit has been filed to declare that the judgment and decree passed in O.S.No.18/1993 dated 28.10.1993 is void, and non-est in law.

3. Pending suit, the petitioner herein, filed a petition in I.A.No.487/2016 under Order 1 Rule 10 r/w Section 151 CPC, to implead himself as a defendant in that suit. In the above petition, the petitioner herein was examined as PW1 and through him Ex.P1 to Ex.P14 were marked. After hearing the argument on both sides and upon perusing the documents, the Trial Court dismissed the petition, against which, the present appeal has been preferred.



4. The learned counsel for the petitioner submitted that the plaintiffs have filed the above suit, fraudulently claiming that, they are the legal heirs born to Chandran, s/o Krishnarajalu Chettiar @ Kichensamy Chettiar, (herein after referred to as Krishnarajalu) s/o Nandhagopal Chettiar and Chandran's mother Anandaye Ammal got married to Krishnarajalu. He further submitted that the said Krishnarajalu never married Anandaya Ammal, and he married one Anusuya @ Muniammal (herein after referred to as Anusuya) only.

4.1 It is further argued by the counsel for the petitioner that, one Padmini D/o of Selvaraj and grand daughter of Nandagpal was married to Chandrasekar Chettiar and they had no issues and the petitioner is son Namdev, brother of Chandrasekar Chettiar. Therefore, in the absence of Class I legal heirs, the Chandrasekar Chettiar is entitled to succeed the properties of his wife Padmini, as her sole legal heir and after his death, the petitioner's father Namdev is entitled to succeed the properties of Chandrasekar Chettiar as his Class-II legal heirs and through his father, the petitioner is having right and interest in the property of Chinnathambi Chettiar and to safeguard the same from the fraudulent and illegal claim of third party strangers. Therefore, he

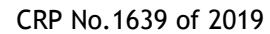


prayed to implead the petitioner as one of the defendants in the suit.

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5. The learned counsel for the respondents 1 to 7/ plaintiffs submitted that Padmini and Chandrasekar died without any issue, however the properties of Padmini, cannot be inherited by husband Chandrasekaran or his Class II legal heirs, as per Section 15 of Hindu Succession Act. He further submitted that the plaintiffs' father namely Chandran is the only male member of the family of Nandagopal and their grandfather Krishnarajalu is the brother of Selvaraj (father of Padmini).

5.1. It is further submitted by him that, after demise of Krishnaraj, his wife Anusuya got married to one Velayudham, through whom, she gave birth to the defendants 1 and 2 and hence, as per Section 24 of Hindu Succession Act, if a widow remarries, she is disqualified from inheriting any of her husband's joint Hindu Family Properties. Further, the suit is relating to joint family properties of late Padmini; and the plaintiffs' father Chandran is the only male coparcener available in the family; and hence, the petitioner has no right to implead himself as a party to the suit. Hence, he prayed for dismissal



6. The learned counsel for the respondents 7 & 8/defendants submitted that the mother of the defendants namely Anusuya is wife of Krishnarajul s/o Nandagopal and hence, neither the plaintiffs nor the petitioner have right over the suit property. Hence, he prayed for dismissal of the civil writ petition.

7. Heard the learned counsel for the petitioner, and the learned counsel appearing for the respondents 1 to 7/plaintiffs, and respondents 8 & 9/ defendants. I have perused the materials on record.

8. A perusal of the records shows that, originally one Anusuya (mother of defendants 1 and 2), claiming to be the wife of Krishnarajulu, filed a suit in O.S.No.18/1993 to declare herself is the only legal heir of deceased Padmini Chandrasekaran and the above suit was decreed on 31.08.2015. Challenging the above decree and judgment, the plaintiffs filed the suit in O.S.No.44/2016, in which the petitioner herein filed a petition to implead himself as one of the defendants and it was dismissed. Hence he preferred the present civil



writ petition.

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9. The Trial Court, in its order, held that, as per the evidence of petitioner, it is revealed that the suit properties are the ancestral properties of Padmini Chandrasekaran; and the petitioner has not produced any documents regarding that the suit properties are derived by the Padmini Chandrasekaran, through her father alone; and further, the petitioner has not produced any material evidence to show how the suit properties are derived by Padmini Chandrasekaran through her husband; therefore, as per Section 15 of the Hindu Succession Act, the petitioner has no locus standi to file the impleading petition and consequently, dismissed it.

10. It is argued by the learned counsel for the petitioner that, the petitioner is the son of Namdev, who is the younger brother of Chandrasekaran and the above Chandrasekaran and his wife Padmini had no issues. Therefore, since Chandrasekaran has no Class-I Legal heirs, the petitioner's father Namdev is entitled to succeed the properties as II Class Legal heirs and through whom, the petitioner has right and interest over the properties. He further argued that, the petitioner is



having sufficient materials to prove his right over the property and is ready to file the same at the time of Trial. When the petitioner pleads to implead himself as defendant to prove his claim, the Trial Court ought to have impleaded him as defendant and given sufficient opportunities to prove his claim, during Trial. But, the Trial Court, at the enquiry stage itself, examined the petitioner alone and came to the conclusion that the property is the ancestral property of Padmini Chandrasekar and the petitioner has no locus standi to file the petition and erroneously dismissed the impleaing petition. Hence, the above order is liable to be set aside.

11. To reply the same, the learned counsel appearing for the respondents 1 to 7/plaintiffs submitted that the petitioner has no locus standi to contest the suit and he is unnecessary party to the suit and hence, the Trial Court has rightly dismissed the petition and the above order does not warrant any interference by this Court.

12. At this juncture, the learned counsel appearing for the respondents 8 and 9/defendants submitted that the defendants are the son and daughter of Anusuya and as per the decree in O.S.No.18/1993



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dated 28.10.1993, they alone having right over the property and hence, the proposed party is unnecessary to the proceedings and hence, the order of the Trial Court is sustainable one.

13. The petitioner claimed that, in the absence of Class-I legal heir of deceased Chandrasekaran, he is having right over the property, as he is the II Class Legal heir of deceased Chandrasekaran. But, it is denied by the plaintiffs that, since Padmini Chandrasekaran had no issues, the properties of Padmini, cannot be inherited by her husband Chandrasekaran or his Class-II legal heir. Hence the plaintiffs claimed that, after death of Padmini, their father Chandran alone was the only male member available in the family and through him, they are having right over the property. But, the contention of the defendants is that their mother Anusuya alone is wife of Krishnarajalu and as per decree passed in O.S.No.18/1993, she was declared as legal heir of deceased Padmini Chandrasekaran, as such, they are having right over the property.

14. It is an admitted fact that the couple Padmini and Chandrasekaran had no issues. All the parties claiming right over the



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property of Padmini Chandrasekaran, by narrating the facts, how they are entitled to. In such circumstances, this Court is of the view that, impleading the petitioner in the suit in O.S.No.44 of 2016 as a defendant, will not cause any hardship to both the plaintiffs and the defendants. Further, mere impleading the petitioner will not change the character of the suit. While the petitioner stated that, he is having materials to prove his right over the suit property and he would produce the same at the time of Trial, without considering the same, the Trial Court examined the petitioner alone as a witness at the preliminary stage itself and has come to the conclusion that the petitioner has no locus standi to file the impleading petition. Only after examining the witnesses on both sides and adducing the materials with regard to the nature of the claim and their right, the Trial Court has to decide the right of the parties. But, without examining both the parties, the Trial Court has come to the conclusion that the petitioner has no locus standi to file impleading petition and dismissed it. Therefore, this Court is of the opinion that the impugned order passed by the Trial Court warrants interference by this Court and as such the same is liable to be dismissed.



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15. Accordingly, the order passed by the Trial Court in I.A.487/2016 in O.S.No.44/2016 is set aside and the I.A.No.487/2016 is allowed. The plaintiffs and the defendants 1 and 2 are at liberty to file their respective reply statement and additional written statement, if any, to the written statement to be filed by the impleaded defendant. Further, since the suit is of the year 2016, the Trial Court is directed to dispose the suit on merits, within eight months from the date of receipt of a copy of this order.

16. With the above direction, the Criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
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To

1. The Principal Subordinate Judge, Puducherry.



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T.V.THAMILSELVI, J.
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