



CRP. No.1537 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP. No.1537 of 2017

Gowri

...Petitioner/Petitioner/plaintiff
Vs.

1.Rajammal
2.Velusamy
3.Kandasamy
4.Mohanraj
5.Sidhuraj
6.Manikandan

....Respondents 1 to 5/Respondents/Defendants
... 6th Respondent/6th proposed Defendant.

PRAYER: This Civil Revision Petition is filed under Section 115 of CPC praying to set aside the fair and decreetal order dated 30.08.2016 passed by the District Munsif Court, Mettur, in I.A No. 341/2016 in O.S No. 295/2010.

For Petitioner : Mr.S.R.Shenbagabaabu

For R1 to R4 : M.R. Jothimanian

For R5 and R6 : Not ready in notice.



CRP. No.1537 of 2017

WEB COPY

ORDER

This Civil Revision petition has been filed to set aside the fair and decreetal order dated 30.08.2016 passed by the District Munsif Court, Mettur Dam in I.A No. 341/2016 in O.S No. 295/2010.

2.The revision petitioner herein is the plaintiff in Suit O.S No. 295 of 2010 for the relief of partition and other consequential relief and the defendants also contested the suit by denying the plaintiffs claim. In the meantime, the plaintiff came to know that some portion of the suit properties were sold by the respondents 2 to 4 to the proposed 6th respondent. Then, he filed I.A No. 341 of 2016 in O.S No.295 of 2010 to implead proposed defendant as sixth defendant in the suit proceedings who is the purchaser of the part of the suit property. Hence, he is the necessary party to the proceedings and he filed I.A No341 of 2016 in O.S No.295 of 2010. On hearing both sides the Trial Court dismissed I.A No.341 of 2016 in O.S No. 295 of 2010 hence the plaintiff preferred this Civil Revision Petition prayed to set aside the same.



CRP. No.1537 of 2017

3. The learned counsel for the petitioner submitted that, after filing of the suit, the plaintiff came to know that some portion of the suit properties were sold by the respondents 2 to 4 to the proposed 6th respondent. Then, he filed I.A No. 341 of 2016 in O.S No.295 of 2010 to implead proposed defendant as sixth defendant in the suit proceedings who is the purchaser of the portion of the suit property, but without considering this the Trial Court erroneously dismissed the I.A No.341 of 2016 in O.S No. 295 of 2010. Hence, he prays to allow this Civil Revision Petition.

4. The learned counsel for the respondent stated that the property was sold prior to filing of the suit which is situated in S.F NO. 250/5 to third parties based on Will deed executed by Marappa Gounder. Further, S.F No.250/5 is not mentioned in the plaint hence there is no necessity to implead the proposed 6th respondent, the Trial Court rightly dismissed the same which needs no interference and he prays to dismiss this Civil Revision Petition.

5. Considering the facts as well as perusal of records, it reveals that the plaintiff being a grand daughter of Marappa Gounder filed a suit and claiming share against the other legal heirs who are respondents herein. The



CRP. No.1537 of 2017

contesting respondent submitted that based on the Will Marappa Gounder bequeathed the property to them and denied the plaintiffs claim and also contented that based on the Will they sold the property with an extent of 40 cents to third parties in respect of survey No. 250/5 which was not mentioned in the plaint. But the plaintiff stated that the purchaser is the necessary party to the suit proceedings. In fact, in partition suit, all the parties and property should be included and otherwise the suit will be affected by partial partition. Hence, the plaintiff rightly filed the petition to include proposed 6th defendants but the Trial Court without appreciating the legal aspects dismissed I.A No.341 of 2016 in O.S No.295 of 2010 which is erroneous one needs interference. Accordingly order passed by the Trial Court in I.A No.341 of 2016 in O.S No.295 of 2010 is hereby set aside.

6. In the result, the Civil Revision Petition is allowed. There shall be no order as to costs. Consequentially, connected miscellaneous petition is closed.

27.10.2022

pbl



WEB COPY



CRP. No.1537 of 2017

T.V.THAMILSELVI,J.

Pbl

To

1. The Principal Sub Court, Pondicherry.

CRP. No.1537 of 2017

27.10.2022