



C.R.P. No. 3422 of 2017

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T.V.THAMILSELVI, J.

This matter was taken up for hearing under the caption “For Being Mentioned” today at the instance of the learned counsel for the petitioner.

2. The learned counsel for petitioner would submit that this Court by an order dated 17.10.2022 allowed the above C.R.P. However, in para-11 as well as in “copy to” of the order, instead of mentioning “III Addl. District Judge, Coimbatore”, it was wrongly mentioned as “Principal District Munsif, Villupuram”. Hence, the matter is listed today.

3. Heard the contentions of learned counsel for petitioner and perused the order.

4. Considering his submissions, the paragraph-11 as well as “copy to” of the order is clarified as follows:

In Para 11 at Page 11

“11. In view of the above discussion, this Civil Revision Petition is allowed. The impugned order dated 25.07.2017 passed in I.A.No.439 of 2017 in O.S.No.776 of 2017 by the learned III Addl. District Judge, Coimbatore is set aside.



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Further, the learned III Addl. District Judge, Coimbatore is directed to dispose of the suit as expeditiously as possible, preferably, within a period of five months from the date of receipt of copy of this order. No costs. Consequently, connected Civil Miscellaneous Petition is also closed.”

Copy to

“2. The III Addl. District Judge, Coimbatore.”

5. Registry is directed to incorporate above correction in the Order of this Court in C.R.P.No.3422 of 2017 dated 17.10.2022 and issue fresh order copy to the petitioner.

21.02.2023

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21.02.2023



C.R.P. No. 3422 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2022

CORAM:

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

C.R.P.(PD).No. 3422 of 2017

and

C.M.P.No.15928 of 2017

V. Manoharan

.. Petitioner

Versus

1.Thulsi Rajkumar
2.Prashanthi Raj Kumar
3.Vishnu Nischal RajKumar
4.R.Vimala
5.R.Santhosh
6.C.N.Ramaraj
7.The Manager
State Bank of India
Peelamedu Branch
Coimbatore.

...Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order in I.A.No.439 of 2017 in O.S.No.776 of 2017, dated 25.07.2017 on the file of III Additional District and Sessions Judge, Coimbatore.



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For Petitioner : Mr.A. Kundavai
For RR 1 to 3 : Mr.Krishna Ravindran
For RR 4 & 5 : Mr.M.Sriram
For RR 6 & 7 : No Appearance

ORDER

This revision is filed by the petitioner/first defendant seeking to set aside the fair and decretal order, dated 25.07.2017 in I.A.No.439 of 2017 in O.S.No.776 of 2017, by the learned III Additional District and Sessions Judge, Coimbatore.

2. The revision petitioner is the 1st defendant in O.S. No. 776 of 2017. The respondents 1 to 3 in this revision are the plaintiffs in the said suit and the respondents 4 to 7 herein are the defendants 3 to 6.

3. The respondents 1 to 3 herein/plaintiffs have filed the suit in O.S.No. 776 of 2007 before the III Additional District and Sessions Judge, Coimbatore, for partition and other consequential reliefs. During the pendency of the suit proceedings, the first plaintiff V. Rajkumar died and therefore, his legal heirs were impleaded as per the order dated 07.09.2016 in I.A. No. 599 of 2016.



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4. The revision petitioner/first defendant had contested the suit by filing written statement. The defendants 2 to 4 in the suit have also filed their written statement. Thereafter, the revision petitioner/first defendant herein has filed I.A. No. 439 of 2017 seeking to transpose himself as the 5th plaintiff in the suit proceedings. The trial Court refused to transpose the petitioner/first defendant as fifth plaintiff in the suit and dismissed the application by order dated 25.07.2017. Aggrieved by the said order, the present civil revision petition is filed by the petitioner herein.

5. The learned counsel for the petitioner/first defendant submitted that the revision petitioner/first defendant, the second defendant and the deceased first plaintiff V. Rajkumar are the sons born to Venkatasamy Naidu and Govindammal. According to the learned counsel, Venkatasamy Naidu is the owner of the properties indicated in Schedule A to G and also having half share in the H Schedule property. While so, on 27.11.1994, Venkatasamy Naidu died leaving behind his wife Govindammal as well as his three sons namely revision



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petitioner/first defendant, the second defendant and the deceased first plaintiff V. Rajkumar. Subsequently, on 17.11.2005, Kamalammal also died leaving behind the revision petitioner/first defendant, the second defendant and the deceased first plaintiff V. Rajkumar to succeed to her estate. The learned counsel further submitted that the second defendant in the suit namely V. Radhakrishnan bequeathed 1/3 share in the suit properties to his wife namely R. Vimala (third defendant). The fourth defendant is the son of defendants 2 and 3. The fourth defendant is also the grand son of Late. Kamalammal, mother of the petitioner/first defendant. According to the learned counsel, soon after the death of Kamalammal, the fourth defendant namely Santhosh has filed O.S. No. 479 of 2006 against the petitioner/first defendant herein and others for partition of the properties mentioned therein on the strength of a settlement deed dated 24.10.2005 said to have been executed by Late. Kamalammal. In the said suit in O.S. No. 479 of 2006, the fourth defendant also claimed that on the same day namely 24.10.2005, Kamalammal also executed a Will in his favour and filed the suit. In the suit in O.S. No. 479 of 2006, the revision petitioner/first defendant herein has filed his written statement questioning the genuineness and validity



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of the settlement deed as well as Will, both dated 24.10.2005. Similarly, the defendants in O.S.No. 479 of 2006 have also filed their written statement and issues have been framed in the said suit in O.S. No. 479 of 2006 as to whether the settlement deed dated 24.10.2005 and Will dated 24.10.2005 are genuine.

6. The learned counsel for the revision petitioner/first defendant further stated that the properties covered in O.S. No. 479 of 2006 as well as the instant suit in O.S. No. 776 of 2007 are one and the same. In the suit in O.S. No. 479 of 2006, during cross-examination, the fourth plaintiff admitted that the settlement deed dated 24.10.2005 and the Will dated 24.10.2005 are genuine. According to the learned counsel, the fourth defendant as well as the fourth plaintiff have colluded together with the result, the fourth plaintiff herein, who is one of the defendants in O.S. No. 479 of 2006, admitted the genuineness of the Settlement deed as well as Will dated 24.10.2005. When the fourth defendant in O.S.No. 479 of 2006 was further cross-examined on 07.04.2017, the fourth defendant in O.S. No. 479 of 2006, who is the fourth plaintiff in the present suit, has given up the case alleged by his



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father (first plaintiff in the present suit) and also given up the contentions made in the proof affidavit in O.S. No. 479 of 2006. Thus, the fourth defendant in O.S. No. 479 of 2006 has submitted himself to a preliminary decree. In such circumstances, the revision petitioner/first defendant has filed the application to transpose himself as fifth plaintiff failing which more prejudice will be caused to him to assert his right over the suit property. The court below, without taking note of the above facts, has dismissed the application for transposing the petitioner and he prayed for allowing this civil revision petition.

7. Heard the learned counsel for the petitioner and the learned counsel for the respondents 1 to 5 and perused the materials available on record.

8. On a perusal of the records, it is seen that the respondents 1 to 3/plaintiffs have filed the suit in O.S.No.776 of 2007 before the III Additional District and Sessions Judge, Coimbatore, for partition and other consequential reliefs. During the pendency of the suit proceedings, the first respondent/1st plaintiff, namely, V.Rajkumar died and his legal



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heirs, who are the sons of Venkatasamy Naidu were impleaded as parties, who was the owner of the plaint schedule "A" to "G" properties. It is further stated that earlier, the fourth defendant in this suit namely O.S. No. 776 of 2007 has filed a suit in O.S. No. 479 of 2006 for partition and other relief as against the revision petitioner/ first defendant in which it is alleged that the fourth defendant in this suit as well as one of the defendants in O.S. No. 479 of 2006 have colluded together and made certain admissions during the cross-examination. Such admission in the earlier suit in O.S. No. 479 of 2006, according to the revision petitioner, would have an adverse impact in asserting a right over the suit property as legal heir of Venkatasamy Naidu. Therefore, he has filed the application to transpose himself as fifth plaintiff in the instant suit in O.S. No. 776 of 2007.

9. To support his contentions the learned counsel for revision petitioner/ first defendant placed reliance on the decision of this Court in the case of **R.Dhanasundari @ R.Rajeswari v. A.N. Umakanth and others**, reported in **2006 (5) CTC 440**, wherein, this Court held thus:



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12. In Nagoor Gani alias Rajamani and Others. v.

Gandhi Meenal and Others. 1988 (2) MLJ 171, a learned Judge of this Court considered the scope of Order 23 Rule 1-A C.P.C. and held in paragraph 12 of his judgment as follows:-

"This new rule has been enacted in order to enable a defendant, who has identical interest, from being denied his interest if he rested on the success of the plaintiff's suit and the plaintiff wanted to withdraw the suit. Before a defendant could invoke this provision, it must be shown that the plaintiff is seeking to withdraw or abandon his claim under Rule 1 of Order 23, C.P.C. It is a condition precedent to enable a defendant to get himself transposed. The principle that follows this rule is that there must be identity of interest between the plaintiff and such a defendant who wants to transpose as a plaintiff. It must be a suit where the defendant is entitled to succeed automatically on the success of the plaintiff in the suit. Such a defendant is usually called as a proforma defendant. To put it in other words, both the parties are projecting the same claim against the other defendants, and therefore, the success of one is the success of the other. In such cases, the law comes to the rescue of



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such a defendant so that the plaintiff, who is having a similar right, cannot defeat the rights of the defendant by colluding with the other contesting defendants."

13. In **Vasanthamma v. V.P. Dhanaraj and Others**, 1990 1 L.W. 209, a Division Bench of this Court considered the discretionary powers of a Court to order transposition. In paragraph 3 of its judgment, the Division Bench held as follows:-

"3. On the question of transposition of parties, the powers of Court, are wide enough to confer a discretion on it to transpose the necessary and proper party, if that is required for an effective and a comprehensive adjudication of the controversy in the lis. The use of the discretion will depend upon the facts and circumstances of the case. This discretion is not an unbridled one, but is circumscribed by two broad limitations. One is, where rights valuable have accrued to the other side. The other is, where there is a lack of bona fides on the part of the party seeking transposition, in that he



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has no plausible case to agitate, having a genuine interest in the lis. In these circumstances, the Court will fetter its hands and will not exercise its discretion. But, the question, as already noted, has to be decided depending on the facts of each case and by bare recapitulation of the principles, the court should not abdicate its discretionary power for ordering transposition, when, in fact, that application needs to be countenanced in the interests of justice and on the facts of the case."

10. In a suit for partition, all the parties are deemed to be the plaintiffs and if one of the defendants make any claim, he has to pay necessary Court fee and accordingly, the first defendant has approached the Court by paying necessary Court Fee and communicated the same to the defendants. The application for transposing the revision petitioner as fifth plaintiff has been filed on the apprehension that the defendants in the suit have colluded with each other and denied the rights of the revision petitioner/first defendant. Hence, it is necessary to transpose as the revision petitioner herein/first defendant as fifth plaintiff in O.S. No. 776 of 2017, but the same was not properly appreciated by the trial Court and therefore, the findings of the trial Court are liable to be set aside.



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11. In view of the above discussion, the Civil Revision Petition is allowed. The impugned order dated 25.07.2017 passed in I.A.No.439 of 2017 in O.S.No.776 of 2017, by the learned III Additional District Judge, Coimbatore, is set aside. Further, the learned Principal District Munsif, Villupuram, is directed to dispose of the suit as expeditiously as possible, preferably, within a period of five months from the date of receipt of a copy of this order. No costs. Consequently, connected Civil Miscellaneous Petition is also closed.

17.10.2022

msm

Index : Yes/No

Speaking Order : Yes/No

To

1. The III Additional District and Sessions Judge, Coimbatore.

2. The Section Officer, V.R.Section

High Court, Madras.



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