



C.R.P. No. 907 of 2017

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

**C.R.P.No. 907 of 2017
and
C.M.P. No. 4437 of 2017**

1. K. Yogalakshmi,
D/o. N. Kamalakannan
2. K.Ramya,
D/o. N. Kamalakannan
3. K.Hemalatha,
D/o. Kamalakannan
4. K. Arun,
S/o. Kamalakannan
5. N.Kamalakannan,
S/o. L.K.Natesa Mudaliar

... Petitioners

Versus

1. Dhanalakshmi,
W/o. Kumar



C.R.P. No. 907 of 2017

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Devaraj (deceased)

3. Mohan,
S/o. Loganathan (late)

4. Neelavathi,
W/o. Loganathan (late)

N. Krishnaveni Ammal (died)

(Memo dated 07.01.2019 filed before this court to record the respondents 1 to 4 as the LRs of deceased 5th respondent is recorded as per the court order dated 07.01.2019 made in C.R.P. (PD) No. 907 of 2017)

6. N.Venkatesan,
S/o. Late Mr. L.K.Natesa Mudaliar

7. S. Deepa,
W/o. M.Dayalan

8. S.Vinoth,
S/o. Late Somasundaram

9. N.Gopikrishnan,
S/o. L.K.Natesa Mudaliar

10. Gnanambigai
W/o. Kalaichander

11. N.Padmavathy,
W/o. Late Ramamurthy



C.R.P. No. 907 of 2017

12. Senbagavalli,
W/o. Sundar

13. Mrs. D.Kavitha,
W/o. Late Devaraj

14. Mr. D. Purushothaman,
S/o. Late Devaraj

15. Mr. D. Dinesh Kumar,
S/o. Late Devaraj

16. Ms. D. Ramya, minor
D/o. Late Devaraj
rep. by her mother and natural
guardian Mrs.D.Kavitha

(RR 13 to 16 are brought on record as LRs
of deceased R2 vide order of this court
dated 22.03.2019 made in C.M.P.No.
6937 of 2019 in C.R.P. No. 907/2017)

(R16 minor represented by her mother and
natural guardian D.Kavitha vide court order
dated 30.04.2019 made in C.M.P. No. 10923
of 2017 in C.R.P. No. 907 of 2017)

... Respondents

PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of
India, praying to set aside the order dated 12.01.2017 made in I.A.No. 178
of 2016 in I.A.No.126 of 2016 in O.S.No. 7407 of 2006 on the file of
learned XVI Addl. City Civil Court, Chennai.



C.R.P. No. 907 of 2017

For Petitioners : Mr. R.Maran

For Respondents : Mr.M.Mohideen Pitchai for
Mr.A.Vivekanandan for
R1, R3, R4, R13 to R16

R2 & R5 – died

R7, R8, R9, R12 – no appearance

R16 – Minor rep. by R13

R11 – not ready in notice

R6 & R10 – no appearance

ORDER

The Revision Petitioners are the plaintiffs 1 to 5 filed a suit in O.S.No. 7407 of 2006 on the file of XVI Addl. City Civil Court, Chennai. for the relief of partition against the defendants in respect of the suit property as described in the plaint schedule.

2. After the suit was contested, a preliminary decree was passed. Based on the preliminary decree, an application for final decree was filed in I.A.No. 126 of 2016 and during the pendency of final decree proceedings, the proposed respondents filed an application in I.A.No. 178 of 2016 under



C.R.P. No. 907 of 2017

Order 1 Rule 10(ii) and Sec.151 of C.P.C. praying to implead them as legal heirs of Loganathan said to be born to Natesa Mudaliar and Krishnaveniammal. According to them, Loganathan is the son of Krishnaveniammal and Natesa Mudaliar. So, as per the legal heir certificate, they are bound to be impleaded in the proceedings. The said application was strongly objected by the plaintiffs stating that on suppressing the real facts, the legal heir certificate was obtained by proposed respondents. In fact, the said Loganathan is not the son of Natesa Mudaliar and Krishnaveniammal and he was born to Krishnaveniammal and her 1st husband. Hence, he is not a legal heir of Natesa Mudaliar, to whom the properties are belonging. On hearing both sides, the trial court allowed the application by relying the legal heir certificate issued by the Tahsildar holding that proposed respondents are the legal heirs of Loganathan, who said to have born to Krishnaveniammal and Natesa Mudaliar. Challenging the said findings, the plaintiffs 1 to 5 preferred this Civil Revision Petition.

3. At the time of argument, learned counsel for Revision Petitioners submitted that the trial court failed to take note of the fact that during the



C.R.P. No. 907 of 2017

suit proceedings, Natesa Mudaliar admits that the said Loganathan is not a son born to him and Krishnaveniammal and he was born to Krishnaveniammal and her 1st husband. Furthermore, he has also pointed out that the legal heir certificate issued by the Tahsildar in favour of proposed legal heirs of Loganathan as a legal heir of Natesa Mudaliar was cancelled by the Revenue Divisional Officer subsequent to the proceedings on 13.11.2018. Hence, they prayed to set aside the order passed by the trial court.

4. By way of reply, learned counsel for proposed respondents submitted that the legal heir certificate was not cancelled as if the said Loganathan is not a son of Krishnaveniammal, but suppressed the fact that the said Natesa Mudaliar is having two wives and on that ground alone, the said legal heir certificate was cancelled, which will not bind the proposed parties for the reason that they are legal heirs of Loganathan and they are entitled to claim share in the property, which was allotted to Krishnaveniammal. The learned counsel also pointed out that they have also filed another suit and the same is pending for disposal.



C.R.P. No. 907 of 2017

WEB COPY 5. Heard and considered rival submissions made by learned counsel for revision petitioners as well as respondents and perused the records.

6. On considering submissions of both sides and on perusal of records, it reveals that in a suit in O.S.No. 7407 of 2006, the plaintiffs claiming share in the property belong to Krishnaveniammal and Natesa Mudaliar, as legal heirs of Natesa Mudaliar. The said suit was contested by legal heirs of Natesa Mudaliar and a preliminary decree was passed on merits. During the final decree proceedings, the proposed respondents filed an application to implead them in the suit as if they are legal heirs of Loganathan, who was son said to be born to Natesa Mudaliar. But, in the earlier suit, Loganathan has not filed any application to implead him as necessary party. Based upon a legal heir certificate, the proposed respondents filed an application to implead them as legal heirs of Loganathan and subsequently, the legal heir certificate was cancelled in the subsequent proceedings. So, as on date, there is no order of the court that the proposed respondents are the legal heirs of Loganathan and there is no



C.R.P. No. 907 of 2017

legal heir certificate supporting the claim of proposed respondents.

Therefore, the order passed by the trial judge based upon the legal heir certificate is not acceptable one as the said certificate was already cancelled. However, a civil court is a right person to declare the legal heir of Loganathan and not by a Tahsildar. But, the trial judge failed to take note of the fact. Hence, the order passed by the learned trial judge is erroneous one and the same is liable to be set aside. Accordingly, the Civil Revision Petition is allowed and the order passed by the trial judge in I.A.No.178 of 2016 is set aside. However, since the suit is pending from the year of 2006, the trial court is directed to proceed with the final decree proceedings and to dispose the same as expeditiously as possible. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

17.10.2022

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To

XVI Addl. Judge,
City Civil Court,
Chennai.

8/9



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C.R.P. No. 907 of 2017

T.V.THAMILSELVI, J.

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C.R.P.No. 907 of 2017

17.10.2022