



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (NPD) (MD) No.87 of 2022

and

C.M.P. (MD) No.416 of 2022

WEB COPY

1.Udhayarani

2.Kanmani @ Rathi

3.Ramya

.. Petitioners/Petitioners/
Respondents 8 to 10/
L.Rs of 6th Defendant

-vs-

1.Rajeswari

..1st Respondent/1st Respondent/
Petitioner/Plaintiff

2.Annakodi

3.Thenmozhi

4.Chitradevi

5.Anbukkarasi

6.Kanagaraj

..Respondents 2 to 6/ Respondent 2 to 6
Respondent 2 to 6/Defendant 1 to 5

7.Vallalathevan

..7th Respondent/7th Respondent/
7th Respondent/7th Defendant

8.Singam

9.Maranadu

10.Krishnan

11.Ramadevi

12.A.Kasirajan

13.Radhadevi

14.Baskaran

.. Respondents 8 to 14/
Propose Parties 1 to 7/
Respondents 8 to 14

Prayer :- Petition filed under Section 115 Civil Procedure Code to call for the records relating with the fair and executable order dated 08.12.2021 made in I.A.No.725 of 2021 in I.A.No.571 of 2003 in O.S.No.33 of 2002 on the file of the District Munsif, Uthamapalayam and to set aside the same.

For Petitioners : Mr.R.Suriya Narayanan

ORDER

Defendants 8 to 10, who are the legal representatives of the 6th defendant, are the revision petitioners before this Court challenging the dismissal of their application in I.A.No.725 of 2021 in I.A.No.571 of 2003 in O.S.No.33 of 2002 filed for impleading respondents 8 to 14 herein as proposed parties in the final decree



proceedings. The learned District Munsif, Uthamapalayam, dismissed the application by his order dated 08.12.2021.

2. The brief facts, which have culminated in the filing of the Civil Revision Petition, are as follows:-

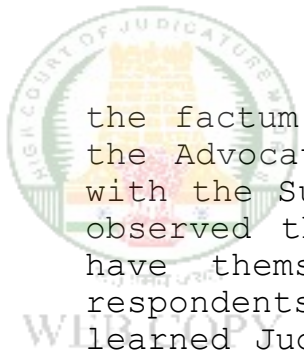
2.1. The 1st respondent has filed O.S.No.33 of 2002 on the file of the learned District Munsif, Uthamapalayam, for partition and separate possession of her 1/5th share in the suit schedule property. The above suit was decreed ex-parte vide judgment and decree dated 25.02.2003. The plaintiff had thereafter, filed final decree proceedings in I.A.No.571 of 2003. Pending the final decree proceedings, the 6th defendant Ayyasamy passed away and his legal representatives were brought on record as defendants 8 to 10. Thereafter, defendants 8 to 10 have taken out an application in I.A.No.725 of 2021 for impleading respondents 8 to 14 as defendants 8 to 14 in the final decree proceedings.

2.2. In the affidavit filed in support of the above application, the revision petitioners would submit that various portions of the property had been sold to respondents 8 to 14 on various dates and therefore, their presence in the final decree proceedings was essential, as they were necessary and proper parties to the proceedings. The revision petitioners would state that once they are made parties to the proceedings, it would help in equitable partition.

3. The 1st respondent/plaintiff had filed a written statement contending that the alienations after the filing of the suit for partition were all hit by *lis pendens*. Further, the partition deed dated 09.03.1994, which was relied upon by the revision petitioners, is a void document and no rights would flow from the same. Further, the plaintiff, being the *dominus litis*, has instituted the suit against the other sharers. Therefore, the presence of the proposed respondents was not necessary.

4. The 8th respondent had objected to being impleaded as party to the proceedings. That apart, it was also contended that the 9th respondent had died on 19.06.2009 itself. Therefore, the 8th respondent had prayed for dismissal of the impleading application. The other proposed parties had not filed a counter. He had also prayed that partition should be effected without causing any harm to the shares of respondents 10, 11, 13 and 14.

5. The learned District Munsif, Uthamapalayam, after hearing the arguments on both sides, and on perusing the records, came to the conclusion that the impleading application for final decree proceedings was not maintainable and further, it appears to be an attempt to protract the proceedings. The learned Judge had observed that the father of the petitioners, who had been impleaded as the legal representatives of the 6th defendant, had chosen not to participate in the preliminary decree and further, had not brought



the factum of the sale to the knowledge of the Court and further, the Advocate Commissioner had already inspected the property along with the Surveyor and filed his report. The learned Judge has also observed that no steps had been taken by the proposed parties to have themselves impleaded in the proceedings and it is only respondents 8 to 10, who have evinced interest in the same. The learned Judge also relied upon the counter of the proposed parties, wherein it has been stated that the 8th respondent was not interested in being impleaded and further, the 9th respondent had passed away. With these observations, the application was dismissed. Challenging the same, the revision petitioners are before this Court.

6. Heard the learned counsel for the petitioners.

7. The revision petitioners are the legal representatives of the deceased 6th defendant. The 6th defendant, who has been served summons in the suit had remained ex-parte and had not contested the suit. Even in the final decree proceedings, he had not filed a counter and pending proceedings, he had passed away. Thereafter, his legal representatives were brought on record and it is these legal representatives, who have taken out this application at this stage.

8. The proposed parties, who according to the revision petitioners are the purchasers of the property have not taken any steps to implead themselves in the proceedings not only that one of the proposed parties has gone to the extent of stating that he is not interested in being impleaded in the proceedings. In these circumstances, it is surprising that the revision petitioners herein appear to be keen on impleading the proposed parties. The finding regarding the necessity of impleading the proposed parties as discussed by the trial Judge is correct and this Court does not propose to re-appreciate the finding and the order dated 08.12.2021 in I.A.No.725 of 2021 in I.A.No.571 of 2003 in O.S.No.33 of 2002 stands confirmed.

9. Consequently, the Civil Revision Petition stands dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-

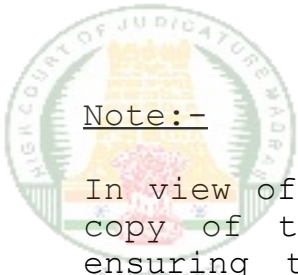
Assistant Registrar (AE)

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Sub Assistant Registrar (CS)

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Note:-

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

The District Munsif, Uthamapalayam.

C.R.P. (NPD) (MD) No.87 of 2022

Dated: 25.01.2022

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