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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) (MD) No.1076 of 2021

and

C.M.P. (MD) No.6253 of 2021

Mrs.J.Hemalatha

.. Petitioner/Petitioner/
Proposed Party

-vs-

1.V.Chitra

2.V.Nithya

[2nd respondent is declared as major and guardianship
of her mother (1st respondent) is discharged vide order
dated 11.11.2021 made in C.M.P.(MD) No.8857/2021
in C.R.P. (MD) No.1076 of 2021]

Thayarammal (Died)

3.Murugan

4.The Managing Director,

Tamil Nadu State Transport Corporation (Salem) Ltd.,
Near New Bus Stand, Salem.

.. Respondents/Respondents/
Respondents

Prayer :- Petition filed under Article 227 of the Constitution of India to set aside the order passed by the Trial Court in I.A.No.172 of 2018 in M.A.C.O.P.No.227 of 2017 on the file of the Additional District Judge, Palani, Dindigul District dated 08.04.2021.

For Petitioner : Mr.G.Anto Prince
For RR1 & 2 : Mr.J.Parekh Kumar
For RR3 & 4 : No appearance

ORDER

(Heard through Video Conferencing)

This revision is filed by the proposed party challenging the order, dated 08.04.2021, passed by the learned Additional District Judge, Palani, Dindigul District, in and by which, the learned Judge had dismissed the petitioner's application in I.A.No.172 of 2018 seeking to implead herself as the 4th petitioner in M.A.C.O.P.No.227 of 2017.

<https://hcservices.ecourts.gov.in/hcservices/> 2. The facts in brief are as follows:-



2.1.The above referred Motor Accident Claims Petition has been filed by respondents 1 and 2 and one Tmt.Thayarammal, who is the mother of T.Vivekananthan, who died in a road accident in respect of which, the claim petition had been filed. The said Thayarammal had passed away on 12.09.2017.

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3.The revision petitioner would submit that prior to her death, her mother, Thayarammal, had executed a Will dated 04.12.2013 registered as Document No.361/2013 on the file of the Sub Registrar Office, Udumalpet, in and by which, the said Thayarammal had bequeathed her undivided interest in the immovable property, as also the compensation award that has to be awarded in the claim petition in favour of the proposed party. The petitioner would also submit that her mother had filed a suit for partition in O.S.No.166 of 2011 on the file of Sub Court, Udumalpet, against respondents 1 and 2, who had refused to give share in the immovable property. Therefore, she would submit that she has to be impleaded as a party to the proceedings.

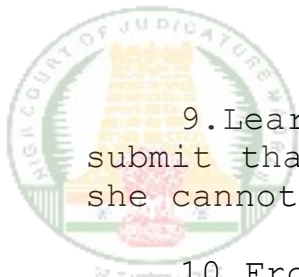
4.Respondents 1 and 2 have filed a counter in which, they would *inter alia* contend that the suit in O.S.No.166 of 2011 had been compromised between the respondents and Thayarammal under which, a property was allotted to Thayarammal. While these compromise talks were on, there was no mention about the Will. Respondents 1 and 2 would further submit that the compensation is yet to be awarded and therefore, Thayarammal had no *locus standi* to execute a Will in respect of an unascertained compensation.

5.The petitioner had examined herself as P.W.1 and had also examined the attessor to the Will as P.W.2 and Ex.A1 to Ex.A3 were marked on her side. On the side of respondents, the 1st respondent had examined herself and no documents had been filed on her side.

6.The learned Additional District Judge, Palani, by her order dated 08.04.2021, dismissed the said application stating that in a Motor Accident Case, it is only when compensation is awarded, that it becomes an estate. In the instant MCOP, no compensation has been awarded and therefore, the deceased Thayarammal had no right to execute the Will in respect of an unascertained amount. Therefore, the application was dismissed. Challenging the said order, the petitioner is before this Court.

7.Heard the learned counsel for the petitioner and the learned counsel for respondents 1 and 2.

8.There is no quarrel on the fact that Thayarammal would be entitled to a compensation, if she is held to be a dependant of her deceased son. The said Thayarammal has only bequeathed this interest in favour of her daughter.



9.Learned counsel appearing for respondents 1 and 2 would submit that the proposed party is not a dependant and therefore, she cannot be impleaded as a party to the proceedings.

10.From the impugned application, it is clearly evident that the petitioner does not seek to implead herself as a dependant, but only as a legatee of the deceased. Whether she is entitled to a compensation or not is a matter to be decided during the trial of the claim petition. At this juncture, she only seeks to be substituted in the place of her deceased mother. If the Court holds that Thayarammal is entitled to a share, the petitioner would automatically be entitled to that share on the strength of the Will executed in her favour. Therefore, this Court is of the considered opinion that the learned Additional District Judge, Palani, is erred in dismissing the application in I.A.No.172 of 2018.

11.In the result, this Civil Revision Petition is allowed and the order dated 08.04.2021 passed in I.A.No.172 of 2018 in M.A.C.O.P.No.227 of 2017 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

abr

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 Additional District Judge,
Palani, Dindigul District.

+1 CC to M/s.G.ANTO PRINCE, Advocate (SR-230[F] dated 04/01/2022)

C.R.P. (PD) (MD) No.1076 of 2021

Dated: 04.01.2022