



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.01.2022

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THE HONOURABLE **MS.JUSTICE P.T.ASHA**

C.R.P(MD)No.2270 of 2017

and

C.M.P. (MD)No.11032 of 2017 and C.M.P. (MD)No.5564 of 2021

R.Krishnan (died)
2.K.Kannagi
3.K.Sivakumar
4.K.Velkumar
(Petitioners 2 to 4 are brought on record
vide Court order dated 10.07.2020) ... Petitioners

Vs.

1.S.P.G.R.Mathavan
2.M/s.S.P.G.Ramasamy Nadar Sons
A Partnership Firm through its Managing Partner,
S.P.G.R.Nithyanandham.
3.S.P.G.R.Nithyanandam
4.S.P.G.R.Chandran ... Respondents

PRAYER:- Civil Revision Petition filed under Article 227 of Constitution of India, to call for the records of the suit in O.S.No.54 of 2016 on the file of the Subordinate Judge, Virudhunagar and allow this revision petition by setting aside the order passed by the Subordinate Judge, Virudhuangar in I.A.No.472 of 2016 in O.S.No.54 of 2016 dated 06.03.2017.

For Petitioner : Mr.K.Muraleedharan
For R1 : Mr.C.Jeganathan
for Ms.G.K.Chitra Devi

For R2 to R4 : Mr.D.Nallathambi

ORDER

The third party, whose application for impleading him as a party to the proceedings was dismissed, is the revision petitioner before this Court. The short facts necessary for the disposal of the revision petition are as follows:

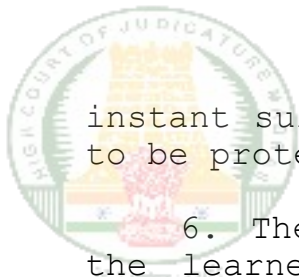


2. The first respondent herein had filed the suit in O.S.No.54 of 2016 on the file of the learned Subordinate Judge, Virudhuangar, for dissolution of the second respondent / first defendant Firm and for rendition of accounts. The suit had been filed against the partnership Firm and the respondents 3 and 4 as well. Pending the proceedings, the revision petitioner has taken out an application in I.A.No.472 of 2016 to implead him as a party to the proceedings. In the affidavit filed in support of the said petition, the revision petitioner would contend that he has already filed a suit for partition in which the first defendant Firm is also a party in which he has 1/7th share, on the demise of his father S.P.G.Ramasamy Nadar. Therefore, since he has already instituted a suit for partition, he had to necessarily be impleaded as a party to the proceedings.

3. The plaintiff and the other respondents had objected to the said application, *inter-alia* contending that he is not a partner in the partnership business and that even when his father was running the business, he had not made the Firm as a part of the joint family property. After the demise of the father, the second respondent Firm was being run by the partners, consisting of respondents 1, 3 and 4 herein, at no point of time, were any of the other brothers, a partner in the second respondent Firm. In fact, it is their contention that several partnership Firm businesses were started and in each of the Firms, some or all of the brothers were partners. As such, the seven sons of S.P.G.Ramasamy Nadar were partners in one or another Firm. However, the petitioner is not a partner in the second respondent Firm. Therefore, he was not entitled to be impleaded as a party. The family arrangement /Will relied upon by the plaintiff has no bearing on the partnership Firm.

4. The learned Subordinate Judge, Virudhunagar, before whom the application was pending, by her order dated 06.03.2017, had dismissed the said application. The learned Judge observed that the second respondent Firm, which was registered in the year 1991, had only five partners consisting of respondents 1, 3 and 4 and two other sons of S.P.G.Ramasamy Nadar, who had died. The revision petitioner was not a partner at any point of time. Since the suit is one of dissolution of the Firm and for rendition of accounts, the revision petitioner was neither a necessary nor a proper party to the proceedings. Challenging the said order, the revision petitioner is before this Court.

5. Mr.K.Muraleedharan, learned counsel appearing for the revision petitioner would contend that under the Will dated 29.05.1987, marked as Ex.A1 in the suit in O.S.No.2 of 2003 for a partition of the properties and the family arrangement dated 03.06.1989 which is marked as Ex.A.38 in the said suit, would clearly show that the sons of the deceased S.P.G.Ramasamy Nadar were having a share in the joint family property and the partnership Firm is also to be treated as a joint family property. Therefore, since



instant suit was very essential as the interest of the sharers, had to be protected.

6. The learned counsel for the petitioner had submitted that the learned Subordinate Judge, Virudhunagar, has not appreciated this fact properly. He would submit that the Will and the family arrangement would clearly establish the fact that all the properties which also includes the properties of the second respondent Firm, were the properties of the joint family and therefore, the petitioner had to be heard before any orders are passed in the suit in question.

7. Per contra, Mr.D.Nallathambi, learned counsel appearing for the respondents 3 and 4 and Mr.C.Jeganathan, learned counsel appearing for the respondent No.1/plaintiff would submit that the partition suit which had been decreed on 15.03.2017, is already the subject matter of the first appeal. That apart, the father was not a partner in the instant Firm which was registered in the year 1991. Under the deed, each of the brothers had a separate property. The second respondent Firm has not been impleaded in the suit in O.S.No.2 of 2003. They would contend that if the contention of the third party / petitioner has to be taken, then the Firm also ought to have been made as a party. Therefore in the given circumstances, the order passed by the learned Subordinate Judge, Virudhunagar, cannot be found fault with.

8. Heard the learned counsels on either side and perused the records.

9. The only ground on which the plaintiff seeks to have himself impleaded, is that since he has already filed a suit for partition in which the first defendant Firm is a property, he had to be impleaded in the present proceedings. However, a perusal of the cause title in the suit in O.S.No.2 of 2003 would show that the partnership Firm has not been made as a party. The properties belonging to the Partnership Firm as well as the other properties, are already the subject matter of the suit in O.S.No.2 of 2003 in which preliminary decree has been passed.

10. The suit in O.S.No.54 of 2016 on the file of the Subordinate Court, Virudhunagar, is one for a dissolution of a Partnership Firm and for rendition of account among the partners. Admittedly, the revision petitioner is not a partner in the said Firm. In these circumstances, the petitioner cannot be impleaded as a party defendant in the suit, in which only the partners can be made as a party. In these circumstances, I do not find any infirmity in the order passed by the learned Subordinate Judge, Virudhunagar.

11. Since the suit is of the year **(*)2016**, a direction is issued to the learned Subordinate Judge, Virudhunagar, to dispose of



the suit on or before 31.08.2022.

12. Consequently, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (W)

(*)Corrected as per order of this court dated 04.03.2022

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

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:-

(*)to be substituted the order already despatched on 16.02.2022

The Subordinate Court, Virudhunagar.

+1 CC to M/s.C.K.CHITRA DEVI, Advocate (SR-2421[F] dated 25/01/2022)

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-2452[F] dated 25/01/2022)

C.R.P(MD)No.2270 of 2017 and
C.M.P. (MD)No.11032 of 2017 and
C.M.P. (MD)No.5564 of 2021

_RD(15.02.2022) 4P 4C

SVS(CO)

TR(10.03.2022) 4P 4C