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CRP. (NPD) No.128



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P. (NPD)No.1286 of 2021
and C.M.P.No.10056 of 2021

Ramalingam

... Petitioner

Vs.

1.J.Saravanan

2.J.Babu

Rajammal (died)

3.G.Sachidanandam

4.Jaganathan

5.Rani

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 08.12.2020 in I.A.No.2 of 2019 in I.A.No.1118 of 2014 in O.S.No.177 of 2014 on the file of the Principal District Munsif Court, Tirupattur, Vellore District.

For Petitioner : Ms.Elizabeth Ravi

For R1 and R2 : Mr.PA.Sudesh Kumar

For R3 to R5 : No appearance



ORDER

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O.S.No.177 of 2014 was filed by one Ramalingam, the civil revision petitioner herein. He had impleaded his mother Rajammal as the 1st defendant and brother Sachidanandam as the 2nd defendant. The said suit was decreed on 20.10.2014. Under the said decree, the plaintiff/Ramalingam was given 1/4th share, Rajammal was given 1/4th share and Sachidanandam was given the remaining half share. Pursuant to the decree, I.A.No.1118 of 2014 was presented for passing of a final decree. The learned trial Judge by an order dated 17.04.2015 appointed an Advocate Commissioner to suggest the mode of division. Pending the application, Tmt.Rajammal, the 1st defendant passed away. Therefore, an application was taken out in I.A.No.222 of 2017 to bring on record the legal representatives namely, one Jaganathan and one Rani, for the deceased Rajammal. By an order dated 30.08.2018, the said application was allowed. Subsequently, the respondents 1 & 2 namely, the sons of Jaganathan moved I.A.No.2 of 2019 in I.A.No.1118 of 2014 to implead themselves as the legal representatives of the deceased Rajammal.

2. It is pertinent to point out here that the respondents 1 & 2 were not made as parties in I.A.No.222 of 2017. The basis of the claim of J.Saravanan and J.Babu, the sons of Jaganathan, is that Rajammal executed a WILL in their favour on 15.12.2016 bequeathing her 1/4th share, which she obtained in O.S.No.177 of 2014 in their favour.

This was resisted by the plaintiff/Ramalingam on the ground that since I.A.No.222 of



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2017 was already allowed holding Jaganathan and Rani are the legal representatives of the deceased Rajammal and since the registered WILL dated 15.12.2016 was not produced at that stage, it is not open to the trial Court to implead them as parties on their application.

3. The learned trial Judge considered both these arguments and allowed I.A.No.2 of 2019 on 08.01.2020. This revision is preferred, aggrieved by the order of impleading Saravanan and Babu, the alleged legatees of Tmt.Rajammal as parties to the final decree proceedings.

4. Heard Ms.Elizabeth Ravi and Mr.Pa.Sudesh Kumar, the learned counsel for the respective parties. I have carefully gone through the records.

5. Ms.Elizabeth Ravi would submit that on account of the fact that an order was passed in I.A.No.222 of 2017 bringing on record Jaganathan and Rani, the children of Rajammal as parties to the proceedings and a finding having been given that the WILL had not been produced, the legatees of the WILL are not entitled to maintain an independent application. In other words, the effect of her argument is that the order in I.A.No.222 of 2017 operates as *resjudicata* of I.A.No.2 of 2019.

6. Mr.Pa.Sudesh Kumar, would submit that the beneficiaries of the WILL



written by Tmt.Rajammal were not parties in I.A.No.222 of 2017 and therefore, that order cannot be put against them.

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7. Impleading of the parties as the legal representatives does not give them a right over the property. They have been impleaded for the purpose of a smooth conduct of the suit and taking into its logical conclusion. The relationship between the parties are not denied, but Ms.Elizabeth Ravi would deny the execution of the WILL dated 15.12.2016 in favour of Saravanan and Babu, the sons of Jaganathan. As per Order XXII Rule 5 of CPC, the WILL would necessarily have to be proved. The definition of the legal representative under the Code of Civil Procedure includes even an intermeddler to the property. The share of Rajammal is not in dispute and the preliminary decree having declared her right as 1/4th share, Ramalingam, the plaintiff cannot have the claim more than what had been declared in their favour or in favour of Rajammal. If not for the WILL, Ramalingam would be entitled for a fractional share more i.e., 1/16th share, since 1/4th share, which fell to Rajammal would be divided between Ramalingam, Sachidanandam, Jaganathan and Rani.

8. However, I have to take note of the fact that under Order XXII Rule 5 of C.P.C., where a person claims to be a legal representative, his entitlement would necessarily have to be proved “prima facie, in order to show he is entitled to the estate, represents the estate”. The projection of the WILL dated 15.12.2016 gives



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them the said entitlement. Therefore, subject to the proof of the WILL during the course of the final decree proceedings, the impleading of the parties is not arbitrary and capricious.

9. The question of *resjudicata* will arise only when the matter is heard and finally decided between the same parties. Both the respondents 1 & 2 were not parties to I.A.No.222 of 2017, therefore the question of application of *resjudicata* to the present proceedings does not arise.

10. In fine, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

29.08.2023

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No

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To

The Principal District Munsif
Tirupattur, Vellore District.



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V.LAKSHMINARAYANAN,J.

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