



C.R.P.No. 4166 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2023

CORAM:

THE HONOURABLE Mrs. JUSTICE T.V.THAMILSELVI

C.R.P.No. 4166 of 2023

and

C.M.P.No. 25398 of 2023

Vennila

.. Petitioner

Vs

- 1.Madhammal @ Aaya Ponnu
- 2.Prabavathy
- 3.Muruga Priya
- 4.Kanagadurga
- 5.Mathiyalagan
- 6.Valli
- 7.Malar
- 8.Arumugam
- 9.Jayalakshmi
- 10.Alamelu
- 11.Bakkiyam

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside fair and decreetal order dated 18.07.2023 in I.A.No.3 of 2023 in O.S.No.115 of 2014 on the file of III Additional District Judge, Salem.



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For Petitioner : Mr. R. Subramanian

ORDER

This Civil Revision Petition is filed challenging the impugned order passed in I.A.No.3 of 2023 in O.S.No.115 of 2014 on the file of III Additional District Judge, Salem, the plaintiff has preferred this revision.

2. Before the trial Court, the plaintiff filed a suit for partition and separate possession against the defendants in the year 2014. Defendants 1 to 8 appeared and filed a written statement. In the written statement they raised that necessary parties are not impleaded. More particularly, the legal heirs / grandsons of the deceased wives is to be added. Therefore, she filed application to implead proposed 9 to 11 defendants as a party to the proceedings. That application was objected by the contesting respondents stating that after the commencement of the trial at belated stage, the plaintiff come forward with the application as such is not permissible.

3. Considering both the submissions, the trial Judge dismissed the application holding that the attitude of the plaintiff is to drag on the



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proceedings and she must be more vigilant to implead those parties and now when the case is posted for arguments, it cannot be entertained.

4. Aggrieved against the order passed in I.A.No.3 of 2023 in O.S.No.115 of 2014, the revision petitioner / plaintiff is before this Court.

5. Admittedly, now after completion of the evidence, the plaintiff filed the said application to implead the proposed parties. But as per the contention of the plaintiff that in the written statement, the contesting defendants raised objection that the legal heirs of the deceased wives not been properly impleaded and raised plea of non-joinder of necessary party. Admittedly, the suit for partition and non joinder of necessary party also fatal to the proceedings, if opportunity is not given to the plaintiff to implead all the necessary party before the trial Court, her valuable right to defend the case will be defeated. Though she filed application at the time of arguments, but however fact reveals that as per the objection raised by the defendants there are certain parties to be impleaded. Therefore, to give one more opportunity to the plaintiff to take all the steps to implead necessary parties and to avoid multiple stay proceedings, this Court is inclined to set aside the findings of the trial



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Court by allowing the revision. By adding those legal heirs would not change the nature of the case but the trial Judge failed to take note of the same.

6. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed. The fair and decreetal order dated 18.07.2023 in I.A.No.3 of 2023 in O.S.No.115 of 2014 on the file of III Additional District Judge, Salem is hereby set aside. The plaintiff is directed to cooperate for the proceedings. Accordingly trial Judge is directed to dispose the suit as expeditiously as possible. Also if opportunity given to the contesting defendant to file any additional written statement in respect of impleading the parties then the trial Court can proceed with the matter as per the manner known to law.

29.11.2023

Index :Yes/No

Neutral Citation :Yes/No

AT

Note: Issue order copy on 30.11.2023

To

The III Additional District Judge, Salem.

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T.V.THAMILSELVI, J.

AT

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