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CRP No.4206 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2023

CORAM:

THE HONOURABLE Mr. JUSTICE LAKSHMI NARAYANAN

CRP No.3926 of 2018
and CMP No.21774 of 2018

1.Ragunayaki
2.Sabariraja

... Petitioners

Vs

1.S.Shanmugam
2.S.Bhaskaran
3.S.Venkatesan alias Thiruvenkataraj
4.Swarnalatha
5.Lakshmi
6.Banu Rekha
7.B.Radha Bai
8.B.Chandra Mohan
9.B.Pingalan
10.Mahaendran
11.Kaudilyan
12.Vijayalakshmi

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 17.09.2018 passed by the learned I Additional District Judge, Erode in I.A.No.754 of 2017 in O.S.No.40 of 2004.



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For Petitioners : Mr.Ma.Gowthaman
For Respondents :Mr.T.M.Hariharan
For R.1
RR.2 to 4 and 6 – no appearance
R.5 – notice affixed
Mr.N.Srinivasan
For RR.7 to 11
For R.12 – Not ready in notice

ORDER

The suit is one for partition. The legal heirs of the deceased first defendant filed an application under Order 22 Rules 4 and 5 of Civil Procedure Code to implead themselves, but did not prosecute that application again. Subsequently, they filed an application under Order 1 Rule 10 (2) of Civil Procedure Code which came to be dismissed. Aggrieved over the same, the present revision has been filed.

2. Mr.Ma.Gowthaman, learned counsel for the revision petitioners would submit that they are proper and necessary parties to the suit and therefore Order 1 Rule 10(2) of Civil Procedure Code has to be exercised. The learned counsel would further add that the relationship between the parties is not in dispute.



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3. Mr.N.Srinivasan, learned counsel appearing for the respondents 7 to 11 would state that if they are impleaded as parties, they will file a fresh written statement and only drag on the matter. He very strongly opposes the impleading of the legal heirs.

4. Mr.T.M.Hariharan, learned counsel says that his client is no more and it is pointed out by Mr.Ma.Gowthaman that the legal representatives of the deceased 1st respondent have already been brought on record and their names are printed in the cause list.

5. I have to agree with Mr.N.Srinivasan, learned counsel that if an application under Order 1 Rule 10(2) of Civil Procedure Code is allowed and the petitioners are impleaded as defendants in the suit, they will only drag on the proceedings and thereby create uncertainty in a proceeding which has been initiated as early as in the year 2004. Though the application has been filed under Order 1 Rule 10(2) of Civil Procedure Code, I construe it under Order 22 Rule 4 of Civil Procedure Code. If it is treated as under Order 22



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Rule 4 of Civil Procedure Code, the civil revision petitioners will not have superior right than what the first defendant had and they will be bound by his pleadings.

6. It is made clear that the legal representatives will not file a new written statement, but adopt the statement already filed by the deceased namely the husband and father respectively of the petitioners.

7. Mr.Ma.Gowthaman, is ready for this course of action and he also undertakes that the civil revision petitioners will not stake claim to file a fresh written statement but adopt the written statement already filed by the deceased defendant.

8. Being a suit for partition, which is pending for more than 19 years, if some of the co-sharers are not impleaded, it will be fatal to the suit. It will constrain the plaintiff or other parties to bring forth yet another suit which will only cause an unending cycle of litigation.



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9. Considering the above facts, I.A.No.754 of 2017 in O.S.No.40 of 2004, which has been filed under Order 1 Rule 10(2) of Civil Procedure Code, shall be treated as under Order 22 Rule 4 of Civil Procedure and the application stands allowed.

10. The amended plaint copy will be filed before the trial Court within a period of two weeks from the date of receipt of a copy of the order and the learned I Additional District Judge, Erode shall dispose of the suit in O.S.No.40 of 2004 on or before 28.02.2024.

11. With the above modification, the Civil Revision Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

18.07.2023

Index:Yes/No

Speaking order/Non-speaking order

sr

To

The I Additional District Court, Erode



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V.LAKSHMINARAYANAN,J.,

ST

C.R.P. No.3926 of 2018

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