



C.R.P.(MD)No.2335 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.08.2023

CORAM

THE HONOURABLE MR.JUSTICE **R.VIJAYAKUMAR**

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Krishnan

....Petitioner

Vs

- 1.Andi Ambalam
- 2.Vellaiammal
- 3.Nachammal (Died)
- 4.Kaatrani
- 5.Periyakkal
- 6.Letchumayee
- 7.Veerammal
- 8.Chellammal
- 9.Pothumponnu
- 10.Veluchamy
- 11.Eswari (Died)

...Respondents

PRAYER: The Civil Revision Petition has been filed under Article 227 of Constitution of India, to set aside the fair and decretal order dated 03.10.2013 passed in I.A.No.22 of 2012 in A.S.No.15 of 2012 on the file of the Subordinate Court, Vendasandur, and thereby, allow this Civil Revision Petition.



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For Petitioner : Mr.P.Vinoth
for Mr.R.Subramanian
For R1, R4 to R7 : Mr.T.Antony Arulraj
for Mr.D.Rajkumar
For R8 to R10 : No Appearance
R3 and R11 :Died
R2 :Ex parte

ORDER

The proposed second appellant in A.S.No.15 of 2012 on the file of the Subordinate Court, Vendasandur, is the revision petitioner.

2.One Perumal Ambalam had filed O.S.No.65 of 1995 on the file of the District Munsif cum Judicial Magistrate Court, Vendasandur, through his power agent, Krishnan (the present proposed appellant), for the relief of declaration of title and permanent injunction. The said suit was dismissed by the Trial Court on 28.11.2003. Challenging the said decree, the plaintiff, through his power agent, Krishnan, had filed A.S.No.15 of 2012 on the file of the Subordinate Court, Vendasandur.

3.While the said appeal was pending, the appellant, namely, Perumal Ambalam, had passed away. Thereafter, the power agent,



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Krishnan, had filed an application in I.A.N.22 of 2012 to substitute himself as sole appellant to prosecute the appeal on the ground that the deceased Perumal Ambalam had executed a Will dated 17.10.2001 in his favour. The learned Subordinate Judge, while allowing the application, has exercised her *suo motu* power and has impleaded Class-II legal heir of the deceased Perumal Ambalam, as respondents in the first appeal. Challenging the same, the proposed appellant had filed the present Revision Petition.

4. According to the learned Counsel appearing for the Revision Petitioner, the original appellant, namely, Perumal Ambalam, had executed a Will in his favour and as a legatee, he alone is entitled to prosecute the appeal and that the presence of Class-II legal heirs of the deceased Perumal Ambalam is not necessary and they are unnecessary parties to the appeal. The first appellate Court ought not to have exercised its *suo motu* power and impleaded those Class-II legal heirs. Hence, he prayed for allowing the Revision Petition to the extent of impleading the Class-II legal heirs of the deceased Perumal Ambalam.



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5.Per contra, the learned Counsel appearing for the respondents 1, 4 to 7 had contended that the Court has ample powers to implead any party under Order 1 Rule 10(2) of CPC, if the Court finds that they are necessary parties. In the present case, the proposed appellant has solely relied upon a Will said to have been executed by Perumal Ambalam. Class-II legal heirs of the said Perumal Ambalam are competent parties to make objection to the said Will apart from the original defendants. Therefore, in the absence of the Class-II legal heirs of Perumal Ambalam, the proposed appellant cannot prove the Will said to have been executed in his name.

6.I have carefully considered the submissions made on either side and perused the materials available on record.

7.The proposed appellant had relied upon a Will dated 17.10.2001 said to have been executed by the original appellant in the first appeal. He is aggrieved over the impleading of the Class-II legal heirs of the testator, as respondents in the first appeal. Original defendants are also disputing the said Will. Only if the Class-II legal heirs of the deceased Perumal Ambalam are impleaded, the proposed appellant would be in a position to



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prove the Will dated 17.10.2001. In case, if he succeeds in proving the Will, there may not be any necessity for the other legal heirs to be present in the appeal. On the other hand, if the proposed appellant is not able to prove the Will, naturally, the Class-II legal heirs of the deceased Perumal Ambalam have to be transposed as appellants to prosecute the appeal. Therefore, their presence in the first appeal is necessary and they are necessary parties to the appeal.

8.As contemplated under Order 22 Rule 5 of CPC, whenever any dispute arises whether any person is a legal representative of a deceased party or not, it has to be determined by the Court and such determination will not affect the merits of the said appeal. The said order is limited, only for the purposes of prosecuting or defending the appeal.

9.Under Order 1 Rule 10(2) of CPC, the Court, at any stage of the proceedings on its own motion, even without an application by the parties to the suit, can strike out or add parties. Therefore, the power of the first appellate Court to implead the Class-II legal heirs of the deceased Perumal Ambalam cannot be questioned.



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10.This Court does not find any merits in the present Revision
Petition and hence, dismissed. No costs.

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Index : Yes/No

Internet : Yes/No

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To

1.The Subordinate Judge, Vendasandur.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

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