



CRP (MD) No.1564 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on	21.07.2023
Pronounced on	27.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP (MD) No.1564 of 2023
and
CMP(MD)Nos.7672 and 8850 of 2023

1.Karuppayee @ Chinna Pillai

2.K.R.Selvam

... Petitioners

Vs.

1.R.Karuppaih

2.S.Rasu

Sigappi Ammal (died)

3.D.Jeyaprakash

4.S.Jothi

5.D.Raja

6.Sagunthala

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the order passed in I.A.No.122 of 2022 in O.S.No.92 of 2010 on the file of the District Munsif Court, Vadipatti, dated 21.02.2023 by allowing this civil revision petition.



CRP (MD) No.1564 of 2023

For Petitioner : Mr.P.Jessi Jeeva Priya
For R1 : Mr.R.Saravanakumar
For R2 : Mr.X.Sumalatha

ORDER

The above civil revision petition is preferred as against the order in I.A.No.122 of 2022 in O.S.No.92 of 2010 on the file of the District Munsif Court, Vadipatti, dated 21.02.2023.

2. According to the revision petitioners, the above suit in O.S.No.92 of 2010 was filed by the petitioners/plaintiffs for partition in the suit property, in which, the defendants filed their written statement. On the side of the plaintiffs, P.W.1 and P.W.2 were cross-examined by the defendants and the above case was posted on 10.06.2014 for defendant's side evidence. Since the defendants failed to appear on 10.06.2014, the suit was decreed ex parte. Against the said ex parte decree, the second respondent filed an application in I.A.No.257 of 2014 to set aside the ex parte decree and the same was allowed on 10.09.2014 with a cost of Rs.250/- to be paid by the second respondent on or before 17.09.2015, but the second respondent failed to pay



CRP (MD) No.1564 of 2023

the costs as directed by Court below within the stipulated time fixed by the Court. Thereafter, the second respondent filed an application in I.A.No.420 of 2014 under Section 148 CPC for extension of time and the same was dismissed on 22.12.2014. Against which, the second respondent preferred revision in CRP(MD) No.2452 of 2016, which was dismissed on 02.12.2016, with liberty to work out his remedy before the appropriate Court in the manner known to law. Thereafter, the second respondent filed an appeal along with an application to condone the delay of 355 days in I.A.No.157 of 2017. The said application was dismissed on 11.01.2019. The second respondent again preferred CRP(MD)No.1147 of 2019 and the same was dismissed on 11.07.2022 on the ground that no valid reasons given for the delay. In the mean time, a Commissioner was appointed in the final decree application, who had also filed his report on 19.09.2018. While so, the second respondent filed a memo stating that third respondent died on 08.09.2019. Hence, an application in I.A.No.290 of 2022 was filed to implead the respondents 3 to 6 as the legal heirs of the deceased defendant and the same was allowed on 26.10.2021. The first respondent, son of the second respondent, also filed an application in I.A.No.122 of 2022 to implead



CRP (MD) No.1564 of 2023

himself as seventh defendant and I.A.No.123 of 2022 to set aside the ex parte decree in the above suit in O.S.No.92 of 2010 alleging that the second respondent has executed a registered settlement deed on 02.01.2013 to an extent of 1 acre 5 cents in survey No.86/3A1. Since he was living abroad, he came to know about the ex parte decree recently and hence, filed the above application to implead himself as seventh defendant. In spite of a detailed counter, the trial Court allowed the above application on 21.02.2023 and I.A.No.123 of 2022 is still pending. Aggrieved by this, the revision petitioners/plaintiffs have preferred the above revision petition.

3. The learned counsel appearing for the revision petitioners would contend that the trial Court erred in allowing the application filed by the first respondent/third party to implead himself in the original suit. He would further submit that the petitioners/plaintiffs filed the above suit for partition and the property belong to one Supramania Ambalam, who had two sons, namely, the first defendant herein and one Karuppaiah, who is the husband of the first plaintiff. Therefore, the above suit is between the sons of Subramania Ambalam. Therefore, there is no role for the grandson to



implead himself. He would further contend that the first respondent, who claims through a settlement deed executed by the second respondent, his father, has no direct interest in the suit schedule property and he is not a necessary party in the suit. He would further contend that the settlement deed dated 02.01.2013 has been executed by the second respondent during the pendency of the suit and therefore, he is not a necessary party to the suit. His further contention is that a necessary party is one, without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made, but whose presence is necessary for a complete final decision on the question involved in the proceedings. The first respondent will automatically inherit the share of the second respondent, i.e., his father. Since in the suit for partition all the sharers are already impleaded as parties, the first respondent, who is not a sharer in the suit property, is not a necessary party.

4. On the other hand, the learned counsels for the first respondent and second respondent would submit that by virtue of settlement deed executed by the second respondent in favour of the first respondent, the first



CRP (MD) No.1564 of 2023

respondent is a necessary party in the suit filed by the plaintiff. Therefore, the trial Court has rightly allowed the application filed by the first respondent, which calls for no interference.

5. Heard on both sides and records perused.

6. Admittedly, the property belonged to one Supramania Ambalam, who had two sons, namely, the first defendant and one Karuppaiah, who is the husband of first plaintiff. This being so, when it is a suit for partition, the first respondent, who is only a grandson, has no right, while his father is alive. The trial Court ought to have seen that since it is a suit for general partition and when all the sharers are parties to the proceedings, it is not necessary for the impleading the first respondent as necessary party, since his possession is not that of a co-sharer and his possession was that of a legatee alone as pointed out by the revision petitioner. Therefore, the order passed by the trial Court is liable to be set aside.



CRP (MD) No.1564 of 2023

7. In the result, this Civil Revision Petition is allowed and the order passed in I.A.No.122 of 2022 in O.S.No.92 of 2010 on the file of the District Munsif Court, Vadipatti, dated 21.02.2023 is set aside. No costs. Consequently, connected miscellaneous petitions are closed.

27.09.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
cp

To

The District Munsif,
Vadipatti.



WEB COPY



CRP (MD) No.1564 of 2023

K.GOVINDARAJAN THILAKAVADI

cp

Pre-delivery order made in
CRP (MD) No.1564 of 2023

27.09.2023