



CRP (MD) No.1372 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	18.07.2023
Pronounced on	10.11.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

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P.Jaya

... Petitioner

Vs.

1.Arockiya John Kennedy

2.Robert Claimant

Arockiyasamy Udaiyar (died)

Yohoob(died)

3.Sagayamery

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 19.12.2019 in I.A.No.8 of 2019 in A.S.No.24 of 2017 on the file of the learned Additional Subordinate Judge, Thanjavur.



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For Petitioner : Mr.P.Ganapathi Subramanian

For R1 : Mr.G.Kannan

For R2 : Mr.R.Udayakumar

For R3 : No appearance

ORDER

This revision is preferred against the order dated 19.12.2019 passed in I.A.No.08 of 2019 in A.S.No.24 of 2017 on the file of the learned Additional Sub Judge, Thanjavur.

2. According to the revision petitioner, the plaintiffs filed the suit in O.S.No.55 of 2012 for declaration, for payment of compensation and also for permanent injunction. The said suit was decreed as against the third defendant and the third defendant was also directed to pay a sum of Rs.45,790/- as compensation with 6% interest per annum from the date of plaint till the date of realization, against which, the third defendant preferred



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an appeal in A.S No.24 of 2017. During pendency of the appeal, the third defendant filed the petition in I.A. No.8 of 2019 under Order 22 Rule 4 of CPC and Section 151 of CPC to implead the proposed parties as respondents in the appeal suit. In the above petition, the petitioner/third defendant has stated that the first defendant, namely Arockiysamy Udaiyar, left the suit village in the year 1997 and his whereabouts was not known for several years. Therefore, it is construed that the first defendant has attained civil death. Therefore, it is necessary to implead his legal heirs in the appeal suit. Apart from that, the second defendant died and therefore, it is necessary to implead the legal heirs of the first defendant. The said application was resisted on the side of the plaintiffs stating that the legal heirs of the first defendant do not have any right or title in the suit property for the reason that the first and second defendants settled the suit properties in the year 1985 in favour of the plaintiffs by way of a registered settlement deed. The petitioner herein had fraudulently obtained a sale deed from the first and second defendants and therefore, the respondents 1 and 2/plaintiffs were constrained to file the above suit against the third defendant. It is submitted that the petitioner/third defendant has not obtained any declaration regarding the



death of the first defendant and therefore, it cannot be presumed that first defendant has attained civil death. The respondents 1 and 2/plaintiffs further stated that the first and second defendants were arrayed only as formal parties and no relief is claimed against them. Therefore, it is not necessary to implead the legal heirs of the first defendant in the appeal suit. The first appellate Court after considering the averments made in the petition and in the counter affidavit and the arguments advanced by both parties, dismissed the above application. Against which, the present civil revision petition is preferred.

3. The learned counsel appearing for the petitioners would submit that the respondents 1 and 2 are in collusion with each other and with common intention to grab the suit property from the revision petitioner, wantonly failed to implead the legal heirs of the first defendant in the suit. To avoid multiplicities of proceedings, the first appellate Court ought to have implead the legal heirs of the first defendant. Hence, the order passed by the first appellate court is liable to be dismissed.



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4. On the other hand, the learned counsel for the respondents 1 and 2 would submit that the legal heirs of the first defendant do not have any right or title in the suit property. The first and second defendants settled the suit properties in the year 1985 in favour of the plaintiffs by way of a registered settlement deed. He would further submit that the first and second defendants are added in the suit only as a formal party and no relief is claimed against them. Therefore, the trial Court has rightly dismissed the application, which calls for no interference.

5. Heard on both sides and records perused.

6. According to the revision petitioners, the first defendant was found missing from the year 1997 and therefore, it has to be presumed that the first defendant in the appeal suit has attained civil death and therefore, it is necessary to implead the legal heirs of the first defendant as necessary parties in the appeal suit. This ground was already been raised in the suit. However, the trial court has wrongly passed the judgment without recording the civil



death of the first defendant and impleading the legal heirs of the first defendant. The judgment and decree passed by the trial Court is erroneous.

7. On the other hand, the respondents 1 and 2/plaintiffs would submit that the first and second defendants have settled the suit property in favour of the plaintiffs under a registered settlement deed in the year 1985 and therefore, it is submitted that the first and second defendants are arrayed as only formal parties and therefore, no relief is claimed against the first and second defendants and therefore, it is not necessary to implead the legal heirs of the first defendant.

8. On perusal of records, it is seen that the petitioner has not taken any steps before the trial Court to implead the legal heirs of the first defendant and also to obtain a declaration from the competent Court of law to declare that the first defendant has attained civil death. Since no relief is claimed against the first defendant in the suit, it is not necessary to implead the legal heirs of the first defendant in the present suit. If at all there is any legal right vested, the remedy available to the proposed parties is only to file separate



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suit to establish their right in the suit property. Therefore, no infirmity is found in the order passed by the learned trial Judge. Accordingly, this Civil Revision Petition is dismissed. No costs.

10.11.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To

The Additional Subordinate Judge,
Thanjavur.



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