



C.R.P.(MD)No.1553 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 07.07.2023

Delivered on : 01.08.2023

CORAM:

THE HONOURABLE **MR.JUSTICE C.KUMARAPPAN**

C.R.P.(MD)No.1553 of 2017

and

C.M.P.(MD)No.8646 of 2017

Libinlal

... Petitioner / Petitioner /Proposed 6th defendant

Vs.

1.Leela

2.Sheen Raj

3.Jothish Raj

4.Mercy

5.Rajamalar

6.Selvaraj ... Respondents/ Respondents/Plaintiff and Defendants

(Memo dated 20.04.2023 in USR.No.13735 is

recorded and issuance of notice to R5 is

dispensed with, vide order dated 26.04.2023)

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair order and decretal order dated 06.04.2017 passed in I.A.No.644 of 2016 in O.S.No.74 of 2016 on the file of the I Additional District Munsif, Kuzhithurai, Kanyakumari District and to allow the Civil Revision Petition.



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For Petitioner : Ms.J.Anandhavalli
For Respondents : Mr.B.Brijesh Kishore for R6
: R1 to R4 exparte vide EB
: R5 dispensed with

ORDER

The instant Civil Revision Petition has been filed against the order, dated 06.04.2017, passed in I.A.No.644 of 2016 in O.S.No.74 of 2016, on the file of the I Additional District Munsif, Kuzhithurai, Kanyakumari District.

2. The revision petitioner herein is the petitioner / proposed defendant before the trial Court. According to the petitioner his mother, viz., Leela has filed a suit for partition in respect of the suit property, which was already settled in his name through a settlement deed, dated 06.11.2015. Therefore, he would content that he is a necessary and proper party as the defendant in the partition suit, instituted by his mother.

3. The contesting respondents have objected the application on the ground that the settlement executed in favour of the petitioner /



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proposed defendant is sham and nominal, and would further contend that even according to the settlement deed, the right of the proposed defendant flows from the alleged rights accrued by his mother through a partition decree in O.S.No.55 of 1977. Therefore, the respondent submits that the proposed defendant is neither necessary party nor a proper party to the proceedings as his right is subject to his mother's claim in O.S.No.74 of 2016.

4. The learned trial Judge after considering either side, has dismissed the application on the ground that the petitioner is deriving title through his mother, and that his mother has already brought a partition suit. Therefore, there is no necessity to implead the petitioner as proposed defendant.

5. Aggrieved with the order of the learned trial Judge, the petitioner herein/proposed defendant has come up with the instant civil revision petition.



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6. The learned counsel for the revision petitioner would submit that the petitioner has right in the suit property, and that only with an intention to avoid multiplicity of proceedings, he wanted to be impleaded as party/ defendant. She would also further submit that, the proposed defendant is proper and necessary party to the proceedings. Hence, prayed to allow this application.

7. Per contra, the learned counsel for the respondents would submit that the petitioner is neither necessary party nor a proper party, and would submit that his alleged right is only flowing from his mother's right, which is now under challenge in the partition suit. Therefore, unless partition suit is decided, his right cannot be fructified. Hence, there is no question of impleading the petitioner and prayed to dismiss the petition.

8. I have given my careful and anxious consideration to the submission made on either side.

9. The petitioner has filed the settlement deed, which is said to have been executed by his mother on 06.11.2015. Though the petitioner



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shows that the suit property was originally belongs to his mother, curiously, the settlement deed was executed by the father and mother jointly in favour of the defendant. According to the recitals of the said settlement deed, his mother tracing her title to the property, from O.S.No.55 of 1977, and in the deed, they also referred certain oral partition. According to the petitioner / proposed defendant, the settlement deed is the basis to file the impleading application before the trial Court.

10. In the suit filed by his mother, for the relief of partition in O.S.No.74 of 2016, the plaint is silent towards the oral partition. However, it is admitted by either side that the plaintiff was party to the earlier suit in O.S.No.55 of 1977, and that she was allotted to some portion of the property, in which the plaintiff claims partition. Therefore, when the petitioner's mother, who is the plaintiff in O.S.No.74 of 2016, seeks share in the property derived through the decree in O.S.No.55 of 1977, and is pending, a settlement deed which was executed prior to such partition in respect of the subject matter of the suit, will not give any right to the petitioner, so as to implead him as a party to the suit.



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11. It is pertinent to mention here that the word “ necessary party” means is a person, who ought to have been joined as a party and in whose absence, no effective decree could be passed. In this case, this petitioner cannot be construed as necessary party. Since the effective decree for partition could be passed even in his absence. Similarly the word “proper party” means, whose presence as a matter of convenient to enable the Court to adjudicate more effectively and completely. However, this petitioner even will not come under the category of proper party as his title is subject to the decision of the partition suit filed by his mother.

12. It is equally pertinent to mention here that if in any case, this petitioner is impleaded in the suit, then it will enlarge the scope of the suit and would divert issue to give adjudication as to the validity of the settlement. Therefore, this Court is of the firm opinion that the petitioner is neither proper nor the necessary party. Thus, the findings of the learned trial Judge is perfectly in order. Further, this Court does not find any manifest error in the impugned order. Hence, this Court is not inclined to interfere in the order of the trial Court.



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13. In the result, the instant Civil Revision Petition is dismissed.

There shall be no order as to cost. Consequently, connected Miscellaneous Petition is closed.

01.08.2023

NCC : Yes/No
Index : Yes/No
Ls

To

1.The I Additional District Munsif,
Kuzhithurai,
Kanyakumari District.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN.,J.

Ls

Pre-delivery Order made in
C.R.P(MD)No.1553 of 2017

01.08.2023