



WEB COPY



C.M.P.No.1476 of 2024

in

A.S.No.696 of 2017

M.SUNDAR, J.,

and

K.GOVINDARAJAN THILAKAVADI, J.,

[Order of the Court was made by M.SUNDAR, J.,]

Captioned main appeal i.e., 'A.S.No.696 of 2017' [hereinafter 'AS' for the sake of brevity and convenience] arises out of a partition suit between blood brothers.

2. The partition suit is O.S.No.155 of 2013 on the file of 'III Additional Judge's Court, Salem' [hereinafter 'said trial Court' for the sake of convenience and clarity].

3. Aforementioned partition suit was filed by Mr.S.Shanmugam, (son of Late Sevi Gounder) on 06.06.2013. There are three items of immovable properties and the same shall be collectively referred to as 'suit properties' for the sake of convenience and clarity. When the partition suit was filed on 06.06.2013 on the file of the said trial Court,



Shanmugam arrayed his elder blood brother as sole defendant. Pending suit in the said trial Court, Malliga, wife of Iyamperumal, Selvam, son of Iyamperumal and minor S.V.Harish, son of Selvam were added as D2 to D4 respectively. Ultimately, after full contest, said trial Court passed a 'preliminary decree dated 14.11.2017' [hereinafter 'impugned decree' for the sake of convenience and clarity].

4. Assailing the impugned decree, aforementioned Malliga (D2) alone has preferred the captioned AS [AS.No.696 of 2017] but pending appeal, Malliga died.

5. Now, R3 - Selvam (D3 in said trial Court), R4 - minor Harish (D4 in said trial Court) and R13 - Prabavathi, wife of one Prakash claiming as daughter of Iyamperumal through Malliga have come up with the captioned CMP *inter alia* under Order XXIII Rule 1-A of CPC with a prayer for transposition saying that they want to pursue the suit by stepping into the shoes of Malliga. To be noted, this is learned counsel Mr.T.Mohan Raju's say.



WEB COPY

6. Per contra, Mr.R.Munuswamy, learned counsel for other contesting respondents {claiming under S.Shanmugam (plaintiff) submitted that Selvam (D3), minor Harish (D4) and Prabavathi (R13 in captioned AS)} resisting transposition plea submitted that applicants do not have a right qua suit properties as according to learned counsel, Malliga is not the legally wedded wife of Iyamperumal.

7. As regards petition for transposition under Order XXIII Rule 1-A of 'the Code of Civil Procedure, 1908 (5 of 1908)' [hereinafter 'CPC' for the sake of convenience and clarity], the question to be considered is whether the applicant has a substantial question to be decided as against the adversaries. In the case on hand, we find that the ground on which the captioned transposition application is resisted itself is a ground / substantial question which has to be decided in the main appeal. Therefore, we deem it appropriate to accede to the transposition prayer albeit with a caveat i.e., caveat that the substantial question as to whether the three applicants in transposition application namely, Selvam, Harish and Prabavathi have a right to claim under Iyamperumal is left open for being decided in the main appeal.



WEB COPY



M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

mk

8. Captioned transposition application i.e., captioned CMP ordered in the aforesaid manner. There shall be no order as to costs.

9. Registry to carry out consequential and necessary amendments within a fortnight from today i.e., by 25.03.2024.

[M.S., J] [K.G.T., J]
11.03.2024

mk

C.M.P.No.1476 of 2024
in
A.S.No.696 of 2017
(1/3)