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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2024

CORAM

THE HONOURABLE **MR.JUSTICE V.LAKSHMINARAYANAN**

C.R.P.No.1392 of 2023
and
C.M.P.No.9314 of 2023

1. Thiru.P.Jayaraju
2. Thiru.P.Muthuswamy
3. Thiru.P.Ganesan
4. Thiru.P.Ramasamy
5. Thiru.P.Chinnammal
6. Thiru.P.Sudha
7. Thiru.N.Rajasekar ... Petitioners

Vs

1. Thiru.K.Govindarajan
2. Thiru.K.Ramachandran
3. Thiru.P.Kanagaraj
4. Tmt.Mallika
5. Tmt.Dhanalakshmi
6. Thiru.Venkatachalam ... Respondents

Prayer: Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the order passed by the Hon'ble Additional District Judge, Namakkal in I.A.No.4 of 2022 in O.S.No.231 of 2018 dated 21.11.2022 and set aside the same.

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For Petitioner : Mr.Prakash Paul
For Respondents :
For R1,R3,R4,R5&R6 : No Appearance
For R2 : Mrs.P.T.Ramadevi

ORDER

O.S.No.231 of 2018 is a suit for partition. It is the case of the plaintiff that the properties belonged to one Kondama Naicker. This Kondama Naicker had a wife by name Pothayammal. On her death, the said Kondama Naicker remarried one Muthayammal. The plaintiff is the child born from the marriage between Kondama Naicker and Muthayammal. Stating that Kondama Naicker had purchased the properties out of the sale of the ancestral asset, the present suit for partition has been filed.

2. It is the case of the defendants, who are the children and grand children through Kondama Naicker's first wife namely Pothayammal that all the legal heirs have not been brought on record. It is their specific case that Kondama Naicker had daughter by name Nagammal and her legal representatives have not been impleaded as parties and therefore, the suit is bad for non-joinder of necessary parties. On the basis of these pleadings, the parties went for Trial.

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3. During the course of cross-examination, it was specifically suggested to the plaintiff that Nagammal's legal heirs have not been brought on record. The plaintiff took out an application to implead the children born to Nagammal and her husband Bomma Naicker. This Application was allowed against which the present Revision Petition.

4. The fact that the proposed parties 10 to 12 are the legal heirs of Nagammal is not in dispute. In a suit for partition among the heirs, co-sharers must be represented in the array of parties. In case it is not done so, the suit would be bad for non-joinder of the necessary parties.

5. It is to correct the error of leaving out certain legal heirs that the present application came to be filed. The application itself was filed only on account of the objection that had been raised by the defendants 2 to 9.

6. The said Nagammal is the legal heir of Kondama Naicker and this fact has not been in dispute. Nevertheless, no prejudice is caused to the defendants by the impleading of the legal heirs of Nagammal.

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7. At this stage, learned counsel appearing for the civil revision petitioners state that the brother of the plaintiff one K.Varadarajan has also not been impleaded in the Suit. The fact that his brother who is also a sharer has also not been impleaded does not mean that the other legal heirs should not be impleaded.

8. It is the defendants 2 to 9 who had objected for non-impleading of Nagammal and her legal heirs. That has now been rectified by the present application.

9. I do not find any error in the Order impleading the legal heirs of a daughter in a suit for partition. In this case, the said K.Varadarajan is not impleaded as a party and if the suit is bad for a partial partition, it is for the defendants to take this objection at the time of arguments.

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10. I do not find any error in the Order dated 21.11.2022 in I.A.No.1 of 2022 in O.S.No.231 of 2018. This civil revision petition stands dismissed with the above above observations. No costs. Consequently, connected miscellaneous petition is closed.

18.06.2024

Neutral Citation: Yes/No
Index: Yes/ No
Internet : Yes/No
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V.LAKSHMINARAYANAN, J.
rgm

To
Additional District Judge,
Namakkal.

C.R.P.No.1392 of 2023
and
C.M.P.No.9314 of 2023

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