



WEB COPY



CRP No.1345 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP No.1345 of 2023 and
CMP No.9014 of 2023

Pappammal (died)
R.Krsna Murtii

... Petitioner

Vs.

1. Jothi
2. R.R.Jagadesan

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order, dated 04.03.2023 in I.A.No.6 of 2023 in O.S.No.155 of 2017 passed by the Subordinate Judge, Perambalur.

For Petitioner	: Mr.R.Krsna Murtii (party in person)
For Respondents	: Mr.M.Balaji for first respondent Mr.R.Saravanapandiyan for 2nd respondent



CRP No.1345 of 2023

ORDER

This Civil Revision Petition has been filed to set aside the order passed by the learned Subordinate Judge, Perambalur, dated 04.03.2023 in I.A.No.6 of 2023 in O.S.No.155 of 2017.

2. The brief facts leading to the filing of Civil Revision petition is as follows:

The petitioner herein is the plaintiff and the respondents herein are the defendants in O.S.No.155 of 2017. Originally, the above suit was filed by one Pappammal against R.R.Jagadeesan (2nd respondent herein) seeking declaration of exclusive title over the suit property and consequent permanent injunction restraining the defendant from any manner dealing with the property and also to deliver possession to the plaintiff. Pending suit, she died on 10.01.2020 and the petitioner herein was substituted to her, vide order dated 5.09.2022 in I.A.No.1/2020 in O.S.No.155/2017. Subsequently, one Jothi, the first respondent herein has filed I.A.No.6/2023 to implead herself as one of the defendants in the suit and the petitioner



CRP No.1345 of 2023

herein has raised objection for the same. However, the above petition was allowed and the said Jothi was ordered to be impleaded as second defendant in the suit, by passing the impugned order. Challenging the same, the present civil revision petition has been filed.

3. The petitioner herein is appeared in person and argued the matter.

4. Heard the petitioner and I have perused the materials on record.

5. According to the petitioner, his mother Pappammal had executed a Will dated 13.06.2016, bequeathing the suit schedule property in favour of him and he being the legal heir of Pappammal, he alone is entitled to continue the suit. It is the contention of the petitioner that, the first respondent herein (Jothi), has not filed application to implead herself as one of the parties to the suit, within a time limit as prescribed in the statute and even though his mother Pappammal died on 10.01.2020 itself, she had filed the impleading petition belatedly and on the ground alone, the petition is not



CRP No.1345 of 2023

maintainable. However, without considering the above aspects in proper perspective, the Trial Court has erred in allowing the impleading petition.

6. It is an admitted fact that originally the suit in O.S.No.155/2017 was filed by one Papammal, mother of the petitioner/plaintiff and the respondents/defendants on the file of the Subordinate Court, Perambalur for declaration of title and consequential permanent injunction and she died on 10.01.2020. Further, a perusal of the records reveals that, after demise of Pappammal, the petitioner herein had filed I.A.No.1/2020 to implead himself as supplementary plaintiff in the suit, based on the Will, dated 13.06.2016 executed by the said Pappammal in favour of him, with regard to the suit property. The above petition was dismissed by the Trial Court on 29.03.2021, on the ground that the other legal heirs have not been impleaded as parties in the above petition. Aggrieved by the said order, the petitioner herein has filed CRP No.1158/2021 before this Court, which was also dismissed on 26.05.2021. Therefore, the petitioner had filed C.A.No.4832/2022 before the Hon'ble Supreme Court and it was allowed on



CRP No.1345 of 2023

21.07.2022, by setting aside the order passed by the Trial Court and restored the application for re-consideration by the Trial Court in accordance with law. Pursuant to the above order of the Hon'ble Supreme Court, the above petition in I.A.No.1/2020 was restored to file and it was allowed by the Trial Court, vide order dated 05.09.2022, thereby, the petitioner herein was substituted as plaintiff. Now, the another legal heir of the deceased Pappammal, viz., Jothi has filed I.A.No.6/2023, to implead herself as party defendant, which was allowed, and the same is impugned herein.

7. Admittedly, the said Jothi is the daughter of deceased Pappammal. It is the contention of the petitioner/plaintiff that, the Hon'ble Supreme Court, vide order dated 21.07.2022 in C.A.No.4838/2022, has permitted to implead the petitioner alone, as legal heir of the deceased Pappammal and hence, the impugned order, allowing to implead Jothi as second defendant is liable to be set aside. The above contention of the petitioner is not correct. While allowing the impleading petition in I.A.No.6/2023, the Trial Court has observed as follows.



CRP No.1345 of 2023

10. The petitioner approached the Hon'ble Supreme Court aggrieved over the order of the Hon'ble High Court. The Hon'ble Supreme Court has passed an order in Civil Appeal No.4832/2022 on 21.07.2022 as follows:

" this regard too, it would be relevant to point out that if any enquiry was required to be made, the Trial Court could have adopted the course envisaged by Rule 5 of Order XII of the Civil Procedure, 1908 but, in any case, the application made by the appellant could not have been dismissed altogether.

That being the position, we set aside the orders impugned and restore the said application for re-consideration by the Trial Court in accordance with law".

8. In the petition filed by the petitioner in I.A.No.1/2020, the another legal heir of the deceased Pappammal was not added as a party to the suit, and the petitioner herein alone was ordered to be impleaded as plaintiff. Therefore, now, the daughter of the deceased Pappammal has filed the I.A.No.6/2023 to implead herself as party defendant in the suit. The petitioner's title over the suit schedule property has to be decided on the strength of the alleged Will executed by the deceased Pappammal dated 13.06.2016. Further, since the said Jothi is also one of the legal heir of the



CRP No.1345 of 2023

deceased Pappmmal, the Trial Court has rightly allowed the petition and ordered to implead her as second defendant in the suit, because, there is a contradict interest between the petitioner and the said Jothi. In such circumstances, I find no infirmity in the order passed by the Trial Court and the same does not warrant any interference by this Court.

9. Accordingly, the civil revision petition is dismissed and the impugned order passed by the Trial Court is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

30.01.2024

Note: Issue order copy on or before 02.02.2024

Index: Yes/No
Internet: Yes/No
mst

To

The Subordinate Judge, Perambalur.



WEB COPY



CRP No.1345 of 2023

V.SIVAGNANAM, J.,

mst

CRP No.1345 of 2023

30.01.2024

8 of 8