



C.R.P.(PD).No.2111 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.2111 of 2019
and CMP.No.13658 of 2019

G.Dhayanand (deceased)

1.K.Saraswathi

2.Minor D.Dharshan Bharathi

3.Minor D.Atchaya Bharathi (6 years)

... Petitioners

vs.

1.T.C.Guruswamy Pillai

2.G.Ashok

3.Banumathi

4.C.M.Loganathan

5.Nalandha Shanmugam

6.Yogaraj

7.Kandaswamy @ Kumar

8.D.Sampath

9.P.Dharmaraj

10.Nagarathinam

11.Bhakyalakshmi

12.R.Selvaraj

13.R.Manohar

14.Vimala

15.Priya

16.N.Ganesh

17.Leelavathi @ Leela Bai

18.Backiyam



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19.Valli
20.Selvarani
21.K.Senthilkumar
22.K.Naveenkumar
23.Geethanjali
24.R.Natarajan
25.Jayalakshmi

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the order and decree of the District Judge of the Nilgiris, Udthagamandalam, Coimbatore, dated 07.01.2019 in I.A.No.195 of 2017 in O.S.No.9 of 2011 *inter alia*.

For Petitioners	: Mr.S.Saravanan
For Respondents	:Ms.Gopika for M/s.B.Ramamoorthy for R17 No appearance for R1, R2, R4, R5, R15, R18, R20, R23, R25 R16 and R19 – died R3, R22-left R6, R7 to R11-no such persons R12to R14 and R21-unclaimed R24-vacated



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ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the application filed by the petitioners/plaintiffs to implead the respondents 25 and 26 as party defendants in the suit. The petitioner's husband and father of petitioners 2 and 3 viz., G.Dhayanand filed a suit for partition claiming 3/45th share in the suit property. Pending the suit, the said G.Dhayanand died and the petitioners were brought on record as plaintiffs 2 to 4.

2. It is the case of the petitioners that pending suit, a portion of the suit property was sold by the first respondent father-in-law of 1st petitioner, in favour of 24th respondent under registered sale deed dated 10.05.2011. Since the 25th respondent is claiming herself as legal heir of T.C.Kumarasamy Pillai, father of first respondent, she is also necessary party to the suit.



3. The Court below dismissed the impleading petition filed by the petitioners mainly on the ground that similar application was filed by the deceased G.Dhayanand earlier and the same was not pressed by the petitioners' predecessor by inadvertence. If the purchaser of the portion of the suit property and the person claiming herself as one of the heirs of the common ancestors are not impleaded in a partition suit, there is likelihood of suit being dismissed on the ground of non-joinder of necessary parties.

4. It is settled law that in a suit for partition, all the sharers shall be impleaded as a parties. According to the petitioners, the 25th respondent is claiming herself as legal heir of one Kumarasamy Pillai who is grandfather of first petitioner's husband G.Dhayanand. Therefore, the 25th respondent is a necessary and proper party to the suit.

5. It is also seen that portion of the suit property was sold by the first respondent herein on 10.05.2011. The 24th respondent being an alienee of a portion of the suit property which is subject matter of the partition suit, it is better to have adjudication in his presence. Therefore, the respondents 24



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and 25 are proper parties to the litigation. The earlier application for impleading filed by the predecessor of the petitioners was not dismissed on merits and the same was dismissed as not pressed. In such circumstances, in order to have comprehensive adjudication of the controversy involved in a suit for partition, this Court feels that the impleading application filed by the petitioners should be allowed. Therefore, the impugned order is set aside and the Civil Revision Petition is allowed. No costs. Consequently, the connected civil miscellaneous petition is closed.

31.01.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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S.SOUNTHAR, J.

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To

The District Judge of the Nilgiris,
Udhagamandalam, Coimbatore.

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31.01.2024