



C.R.P.[NPD].No.4147 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 18.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.R.P.[NPD].No.4147 of 2024 & CMP.No. 22715 of 2024

E.Ranganayaki

. . . Petitioner

Versus

1. Ganapathysamy
2. Subramaniam
3. Thirumangainayaki
4. Jothimani

. . . Respondents

PRAYER : Petition filed under Article 227 of Constitution of India to set aside the Order dated 20.02.2024 dated 20.02.2024 in I.A.No.3 of 2023 in a.S.No.23 of 2017 on the file of the subordinate Judge, Pollachi.

For petitioner : Mr.K.Sudhakar

For respondent : Mr.C.Veeraraghavan – R4



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ORDER

Challenging the dismissal of the application filed to implead the subsequent purchases as one of the party, this Civil Revision Petition has been filed.

2. The suit has been filed by the revision petitioner for partition claiming that the properties are joint family properties. However, the suit came to be dismissed on 21.06.2017. The fourth respondent has purchased the property on 01.07.2017. After the dismissal of the suit, the fourth respondent had purchased the property from the first defendant. The revision petitioner filed an appeal against the decree and judgment passed in the suit. During the pendency of the appeal, the revision petitioner filed an application in I.A.No.2 of 2013 for amendment to include the above property as one of the property and the said application is pending. It is the stand of the revision petitioner that in that application, the subject property, which was purchased by the fourth respondent was omitted in the schedule of the



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property due to inadvertence. Hence, the amendment petition has been filed.

As the fourth respondent has purchased the property after the dismissal of the suit, the plaintiff wants to implead him as one of the party in the appeal. The said application has been opposed by the respondent on the ground that he has purchased the property from the first defendant and the property has been allotted to the first defendant by a partition deed dated 13.07.2011 in a partition among the first and second defendants. Hence, it is his contention that the property belong to the first defendant and therefore, the fourth respondent is not a necessary party to be included. His contention has been acceded and the application filed by the revision petitioner has been dismissed. Challenging the same, the present petition has been filed.

3. It is the contention of the learned counsel appearing for the petitioner that the fourth respondent has purchased the property after the dismissal of the suit. Hence, he has filed an application to amend the plaint and the same is pending. Hence, it is his contention that the impugned Order cannot be sustained.



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4. Whereas, the learned counsel appearing for the respondent submitted that the above property was not included in the suit schedule and the said property has been allotted to the first defendant in a partition deed dated 13.07.2011. Whereas, the fourth respondent has purchased the property on 01.07.2017 from the first defendant. According to him, the partition is of the year 2011 and the same has not been challenged. Hence, he opposed this revision petition.

5. I have perused entire materials available on record. The suit has been filed for partition claiming that the properties are joint family properties. However, the suit has been dismissed. In the appeal filed against the said judgment, the revision petitioner has filed an application to include one of the property as the suit property, which is said to be purchased by the fourth respondent, for amendment and the said application is still pending. The present application filed for impleadment has been dismissed.



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6. It is relevant to note that the appeal is a continuation of the suit.

Merely because one of the property has not been included, the same will not deter the plaintiff to seek necessary amendment in the appeal stage to include the property which is said to be a joint family property. Whether such property is a joint family property or a self acquired property is a matter of evidence and it has to be seen independently on the basis of the pleadings and evidence adduced by both the parties. Such being the position, the revision petitioner has filed a petition to implead the subsequent purchaser as one of the party. Therefore, this Court is of the view that his presence is also required for effective adjudication of the lis between the parties. The plaintiff being the *dominus litis*, has every right to implead the person against whom he seek relief. In such view of the matter, mere impleading the fourth respondent in the pending appeal will not take away the rights of the respondents to substantiate their plea that the subject property purchased by the fourth respondent is not a joint family property. Therefore, mere impleading will not prejudice the fourth respondent.



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7. Accordingly, this Civil Revision Petition is allowed and the impugned Order passed in I.A.No.3 of 2023 in A.S.No.23 of 2017 is set aside. The revision petitioner/appellant is directed to carry out necessary amendment in the appeal. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet: Yes

Speaking/non speaking order

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