



CMP(MD). No.672 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Civil Appellate Jurisdiction

Thursday, the Fifteenth day of February Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice P. DHANABAL

CMP(MD). No.672 of 2024

in

AS(MD).No.200 of 2004

S.V.Gandhi ... Petitioner/Proposed 11th Respondent

Vs

1 Ramachandran(Died)

2 Pappammal ... Respondents/Appellants 1 & 2

3 K.S.G.Subbaraj(Died)

4 S.Tamilselvan Alias Subba Reddy(Died)

5 Sasikala Devi,

6 Valarmathi Devi,

7 Malarvizhi Devi

8 Kothaiselvi

9 Lakshmi Prabha ... Respondents / Respondents

3-9

1-7



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10 S.T.Kavitha

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11 S.T.Guruprasath

12 S.T.Guruprasanna ... Respondents/ Respondents
10-12 8-10

Prayer :-

Civil Miscellaneous Petition filed under order 1 Rule 10(2) of C.P.C., to implead the petitioner as 11th respondent in the above appeal AS No.200/2004 and thus render justice.

Prayer in AS. 200/ 2004 :

First Appeal filed Under Section 96 of C.P.C to set aside the Judgment and Decree Dt.8.12.2003 made in O.S.562/1992 on the file of the Additional Sub Court, Dindigul, and allow this first Appeal.

ORDER:- This Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/s.R.Suriya Narayanan , Advocate for the Petitioner and of M/s.s.vellai chamy for R2 and Mr.S.Venkatesh for R3 to R12 Advocate for the respondents, this Court made the following order:

“This petition has been filed by the petitioner to implead the petitioner as 11th respondent in the main appeal.

2. According to the petitioner, one deceased KS.G.Subburaj, filed a suit for Specific Performance in O.S.No.562 of 1999 on the file of the Additional Sub Court, Dindigul, based on the sale agreement, dated 17.11.1999. The said suit was decreed on



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18.12.2003. As against the decree and judgment, one deceased Ramachandran filed appeal in A.S.No.200 of 2004 before this Court.

3. During the lifetime of the said Ramachandran, he executed a Will, dated 04.03.2007 and he also executed the sale deeds in favour of the petitioner in respect of the properties. The said Ramachandran died on 06.02.2011 and thereby, he is the owner of the first item of the suit property in this appeal, and he has not made any claim over the second item of the property through compromise decree. Already, the petitioner filed an application to implead him as party through C.M.P(MD) No.4328 of 2022 and the same was dismissed on 05.12.2022 on the ground that after getting probate of the said Will, and thereby, he filed a probate petition before the District Court Madurai.

4. Suppressing the above said fact, the wife of Ramachandran was added as party to this appeal as legal heir of the Ramachandran. Therefore, the petitioner is a proper and necessary party in the Appeal Suit.



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5. The second respondent has filed a counter stating that the petition is not maintainable. Ramachandran and Subbaraj were cousins. They filed a suit for partition in O.S.No.1001 of 1990 on the file of the Sub Court, Madurai. In the said suit, Ramachandran claimed partition of $\frac{1}{2}$ share in the properties. Pending suit, the matter was compromised between the parties and the same was challenged through appeal in A.S.No.188 of 1997 before this Court and the appeal was allowed and the matter was remanded back to the trial Court. As against the order passed in the appeal, Ramachandran filed a Special Leave Petition before the Hon'ble Supreme Court. The Hon'ble Supreme Court also remanded the matter to the trial Court relating to validity of compromise.

5.1. Thereafter, the trial Court upheld the compromise. As against the said decision, the late Subbaraj filed appeal in A.S.No.56 of 2010 before this Court and the same is also pending for adjudication. Pending these proceedings, on 04.03.2007, the late Ramachandran had executed a registered Will in favour of the petitioner regarding the properties in the said appeal. The



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petitioner has suppressed the material fact. After that, the Will dated 04.03.2007 was cancelled by late Ramachandran and thereafter, two documents were executed in the name of the sale deed, dated 28.06.2007.

5.2. Already, the petitioner has filed a petition to implead him based on the Will and the same was closed. In A.S.No.56 of 2010, the same petitioner filed a petition in C.M.PNo.4328 of 2022 and the same was also dismissed on 05.12.2022 by the Hon'ble Division Bench of this Court. As against the said order, the petitioner preferred the Review Application in Rev.Apl(MD). No.43 of 2023 and the same was dismissed on 08.08.2023. Therefore, the petition is not maintainable and the same is liable to be dismissed.

6. The respondents 10 to 12 have filed a counter stating that the petitioner is very well aware about the pending proceedings and the petitioner already filed C.M.P (MD)SR.No.6430 of 2021, to condone the delay in filing, for setting aside the abatement and to bring him as legal representative of the deceased sole appellant and the same was suppressed by the petitioner and another C.M.P(MD)



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No.5912 of 2021 was filed by the petitioner to restore the appeal.

Thereafter, the same was withdrawn by the petitioner on 09.03.2022. Therefore, the petitioner's stand as legal representative has been already rejected and the petitioner has also withdrawn the application and by suppressing all these facts, filed this present petition. Therefore, this petition is not maintainable and the same is liable to be dismissed.

7. This Court heard both sides and perused the materials on record.

8. According to the petitioner, the sole appellant Ramachandran died. During the pendency of the appeal, the said Ramachandran executed a Will in favour of the petitioner on 04.03.2007. Therefore, he is the legal representative of the deceased Ramachandran and thereby, his presence is very essential to the said case.

9. According to the respondents, the said Will was already cancelled and already, the same petitioner filed appeal before this Court in A.S.No.56/2010, wherein the petitioner has taken a same plea and the same was also dismissed. Further, in this appeal also,



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already the petitioner filed a petition under Order 22 Rule 3 of C.P.C stating that he is the legal representative of the deceased appellant and thereafter, the same was withdrawn by the petitioner and now filed this petition. Therefore, the petition is not maintainable.

10. This Court has perused the records and on a perusal of records it is seen that the petitioner has filed a petition to implead him as a party since the petitioner is the legal representative of the deceased appellant Ramachandran. According to the said Ramachandran has executed a Will in favour of the petitioner dated 04.03.2007. The said Ramachandran died on 06.02.2011, but the petitioner has filed this petition only in the year 2024. Already the same petitioner has filed a petition for impleading him as a legal representative of the deceased appellant and the same was dismissed by this Court. In this appeal also, already the petitioner has filed petition to implead him as a legal representative of the deceased and the same was withdrawn by the petitioner. The said fact has not been mentioned in the affidavit. Already in another appeal also, the petitioner has filed application to implead him as a



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party and the same was also dismissed by the Division Bench of this Court. However, as against the verdict, no appeal was filed by the petitioner thereby, the order passed by the Division Bench of this Court has become final and the same is binding upon the petitioner. Again the same petitioner has filed this petition based on the same Will and the same set of facts. Therefore, this petition is not maintainable and the same is liable to be dismissed.

11. The learned counsel appearing for the petitioner/appellant has relied upon the judgment of the Hon'ble Apex Court reported in ***(2014) 15 SCC 789 (Karedla Parthasaradhi vs. Gangula Ramanammal (dead) through legal representatives and others)***.

12. On a perusal of the above said judgment, this Court is of the view that the said judgement is not applicable to the present facts of the case. Because, in this case already the petitioner has filed application to implead him as a party to this proceedings and the same was declined and again the same petitioner has filed the present petition. Therefore, the said case will not be applicable to the present facts of the case.



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13. In view of the above said discussions, this petition has no merit and deserves to be dismissed. Accordingly, this petition is dismissed. No costs."

Sd/-

Assistant Registrar(CS-II)

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/04/2024

Sub Assistant Registrar
(CS-I/II/III/IV)

TO
The Additional Subordinate Judge,
Dindigul,

ORDER DATED : 15/02/2024

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ORDER

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in
AS(MD).No.200 of 2004

SI-(03.04.2024) 9P/ 2C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.