



C.R.P.(MD).No.920 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **24.04.2024**

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD)No.920 of 2019

and

C.M.P(MD)No.5295 of 2019

K.K.Dharmar @ Dharumar
@ M.M.Dharmalingam

... Petitioner/Petitioner
Third Party

Vs.

1.Indirani

... 1st Respondent/1st Respondent
Plaintiff

2.Dhanalakshmi @ Dhanam

3.Geetha

4.Lalitha

5.Latha (Died)

6.Roopavathy

... Respondents 2 to 6/
Respondents 2 to 6/
Defendants 1 to 5

7.Parasuraman (Died)

8.Subasree

... Respondents



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(Respondents 7 and 8 are brought on record as legal heirs of the deceased fifth respondent vide Court order, dated 08.02.2022 made in C.M.P(MD)Nos.7744 and 7745 of 2019 in C.R.P(MD)No.920 of 2019)

(R-7 died and R-8 is recorded as legal heir of the deceased seventh respondent vide Court order, dated 08.02.2022 made in C.M.P(MD)Nos.7744 and 7745 of 2019 in C.R.P(MD)No.920 of 2019)

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the dismissal of I.A.No.381 of 2017 in O.S.No.19 of 2015, dated 25.02.2019 on the file of the District Munsif Court, Keeranoor and allow the Civil Revision Petition.

For Petitioner : Mr.N.Balakrishnan

For R-1 : Mr.K.P.Narayanakumar

For R-2 to R-4 &
R-6 & R-8 : No appearance

ORDER

A third party to O.S.No.19 of 2015 on the file of the District Munsif Court, Keeranoor is the revision petitioner herein. The first respondent herein as plaintiff has filed O.S.No.19 of 2015 for the relief of partition and separate possession. A preliminary decree was passed on 07.07.2015. Based upon the said preliminary decree, the decree holder had filed I.A.No.86 of 2015 for



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passing a final decree. An Advocate Commissioner was appointed to effect partition. Pending final decree proceedings, a third party to the suit had filed I.A.No.381 of 2017 to implead himself as the sixth defendant in the suit as well as as the sixth respondent in the final decree proceedings.

2. According to the third party, himself and his brother M.M.Dhayanidhi have already partitioned the subject matter of the suit and some of the properties have been allotted to his share. Suppressing the said partition, the legal heirs of M.M.Dhayanidhi have filed the suit in O.S.No.19 of 2015 for partition, as if the entire property exclusively belongs to M.M.Dhayanidhi. The final decree Court after considering the submissions on either side arrived at a finding that, the present application for impleading himself in the final decree proceedings is not maintainable without seeking to set aside or cancel the preliminary decree proceedings. The Trial Court further found that no share has been allotted to the third party in the preliminary decree and therefore, he is not a necessary party in the final decree proceedings. Based upon the above said findings, the Trial Court proceeded to dismiss the impleading application. Challenging the same, the present revision petition has been filed.



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3. According to the learned Counsel appearing for the revision petitioner, the plaintiff and the defendants have proceeded with the suit, suppressing the fact that, some of the suit schedule properties have been allotted to the share of the revision petitioner during the lifetime of M.M.Dhayanidhi. Therefore, any partition decree passed, would affect the title and possession of the revision petitioner. Hence, he is a necessary party not only to the preliminary decree proceedings but also to the pending final decree proceedings.

4. Per contra, the learned Counsel appearing for the respondent herein had contended that, since no share has been allotted to the revision petitioner during the preliminary decree proceedings, he is an un-necessary party to the final decree proceedings. That apart, if he claims any independent right or title, it is for him to establish the same in a manner known to law and he cannot be permitted to inter meddle in the final decree proceedings.



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5. I have carefully considered the submissions made on either side and perused the materials available on record.

6. Admittedly, the revision petitioner herein is a third party to a partition suit, in which already preliminary decree has been passed and final decree proceedings are pending. The revision petitioner is claiming independent title to some of the suit schedule properties on the ground that, the properties have already been partitioned between himself and his brother M.M.Dhayanidhi. It is also brought to the notice of the Court that, sons of the revision petitioners have filed O.S.Nos.206 and 207 of 2019 before the District Munsif Court, Illupur for the relief of declaration of title and permanent injunction on the ground that, the respective plaintiffs are the exclusive owners of the suit schedule property. Hence, it is clear when the revision petitioner and his sons are making an exclusive claim over the property, no purpose would be served by impleading them in the final decree proceedings in a partition suit. Therefore, the Trial Court has rightly dismissed the application to implead the revision petitioner. The revision petitioners are entitled to work out their remedy in O.S.Nos.206 and 207 of 2019 or by filing any claim petition if the final decree is put to execution.



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There is no question of impleading them in the final decree proceedings.

7. With the above said observations, this Civil Revision Petition stands disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

24.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

1.The District Munsif Court,
Keeranoor.

2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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