



C.R.P. (MD) No. 1666 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.07.2024

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THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P. (MD) No. 1666 of 2022

and

C.M.P. (MD) No. 7326 of 2022

1.Dhanavalli
2.Amsarajan
3.Dhanalakshmi

... Petitioners/
Proposed Defendants 4 to 6

-VS-

1.Valli
2.Chinnammal

... Respondents 1 & 2/
Plaintiffs 1 & 2

3.Ganeshan
4.Annammal
5.Prabhakaran

... Respondents 3 to 5/
Defendants 1 to 3

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records of the impugned fair and ex-order in I.A.No.1 of 2020 in O.S.No.318 of 2018 dated 13.07.2022 on the file of the learned Additional Subordinate Judge, Dindigul, quash the same and allow I.A.No.1 of 2020 in O.S.No.318 of 2016.



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For Respondents : Mr.T.K.Gopalan for R1 and R2

No appearance for R3 to R5

ORDER

The Civil Revision Petition is directed against the order allowing the interlocutory application filed by petitioners who are third parties to the suit to implead themselves as Defendants 4 to 6.

2. The suit in O.S.No.318 of 2018 is filed by one Valli and Chinnammal against their brothers and sister, namely Ganesan and Annammal. The plaintiffs claim that both the two plaintiffs and the defendants are entitled $\frac{1}{4}$ share in respect of the ancestral properties as they are all the children of one Nallugounder. The suit is resisted by the defendants. In the written statement filed by the first defendant, it is contended that the partition is already over, parties are enjoying their separate shares and even the patta has been changed in their names.

3. While so, the first defendant's son Prabhakaran filed an application to include himself as the third defendant in the suit. The said Prabhakaran also is supporting the stand of the first defendant and additionally contending that one



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property in Survey No.770/5B should also be partitioned as the same is purchased of the joint family income. The said application filed by the said Prabhakaran was allowed and he has also filed the written statement on the said lines and is contesting the suit.

4. At this stage the present three petitioners namely Dhanavalli, Amsarajan and Dhanalakshmi filed the present application to implicate themselves as defendants in this suit. It is seen that the Dhanavalli and Amsarajan are the children of the first defendant namely Ganesan and Dhanalakshmi is the daughter of the second defendant Annammal. They also seem to tow the same line as that of Prabhakaran by contending that they are also coparceners entitled to a share in the property and that the property is already divided and the patta has also been changed. Apart from supporting the stand of the first defendant, they want to raise a plea that yet another property in Survey No.789/5B2 should also be included in the suit for partition.

5. The Trial Court found that when the proposed parties are claiming only through D1 and D2 and in the absence of any allegations being made against D1 and D2 that they are acting against their interests, the petitioners were not necessary parties to the suit and dismissed their application.



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Therefore, the present Civil Revision Petition is filed.

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6. Mr. RM. Arun Swaminathan, learned Counsel appearing on behalf of the petitioner would submit that the Trial Court may be right considering the original scenario, that is, the brothers and sisters alone fighting the partition suit. Once one of the legal heirs and the other coparcener i.e., the son of D1 is impleaded as the third defendant in the suit, then the other children shall also be impleaded.

7. Per Contra, Mr. T.K. Gopalan, learned Counsel appearing on behalf of the respondents would submit that the suit is of the year 2016 and is pending for the trial only because of the pendency of the present civil revision petition. When it is the case of the petitioners that their fathers have been taking due care of the suit, they need not be separately impleaded as the defendants in this suit. It is his submission that the oblique motive behind the impleading application is that the other property which is now sought to be made as the subject matter of the suit is in the name of the son-in-law and is not liable for partition. Since the said property is acquired, to prevent the compensation from being disbursed, the same is now sought to be included in the suit. Therefore, he would submit that the entire implead petition is mischievous only to prevent



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the other persons, who are the legal heirs and the son-in-law of Nallugounder, from withdrawing the respective amount. He would further submit that the application is also filed belatedly.

8. I have considered the rival submissions made on either side and perused the material records of the case. The Trial Court has gone on the footing that even as per the case of the parties, each of the four clans is represented and as such the suit is filed with the necessary parties when the petitioners are not imputing any motives on their respective fathers, the next generation need not be impleaded. The said approach cannot be termed as incorrect but once the third defendant who is the son of the first defendant is impleaded, the plaintiffs have not also questioned the same, the same logic should extend to the respondents herein who are also children for the first and second defendant.

9. The primary objection concerns the attempt to bring in new properties. The property mentioned in Survey No.789/5B2 was in the name of the son-in-law of Nallugounder. It can be seen that the original defendants while filing their written statement had not taken any stand that the said property is also an ancestral property. There is no explanation as to why it was



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not mentioned even in the written statement of the newly impleaded third defendant. Therefore, when the respondents who are seeking to now implead themselves are trying the plead that the said property is also an ancestral property for the first time, that too at the stage of the disbursal of the compensation, it is made clear that though it would be open for the newly impleaded respondents to make such a claim which would be decided in the main suit, there shall not be any interim order regarding the disbursal of the compensation. They can neither take any objection before the Land Acquisition authorities regarding disbursal of the compensation. If only ultimately they succeed in establishing that the same is also an ancestral property, then accordingly the value can be ascertained and adjusted between the parties and in that process, no prejudice shall result to the newly impleaded defendants. With the above interim directions regarding the new property which is sought to be mentioned by the defendants herein, this Court deems it fit to allow the petitioners to be impleaded as defendants 4 to 6. The plea regarding partial partition is also since settled by this Court that it will not disentitle the plaintiffs but only preclude them from claim a share in those properties later in point of time.

10. In view thereof, the impugned order dated 13.07.2022 made in

I.A.No.1 of 2020 in O.S.No.318 of 2018 is set aside and the petitioners 1 to 3



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herein are directed to be impleaded as respondents 4 to 6 in the above suit. The petitioners shall file their written statement/counterclaim, if any, within two weeks from the date of receipt of a copy of this order and upon filing of their written statement, reply, if any, by the plaintiff, shall be filed within a period of one week thereafter. Thereafter, within a further period of six months, the suit can be decided by the Trial Court on merits. Consequently, the connected Miscellaneous Petition is closed. No costs.

10.07.2024

NCC : Yes/No

PKN

To

The Additional Subordinate Judge, Dindigul.



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D.BHARATHA CHAKRAVARTHY, J.

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