



CMP(MD) No.15791 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Monday, the Fourth day of March Two Thousand and Twenty Four

PRESENT

The Hon`ble Mrs.Justice S.SRIMATHY

CMP(MD) No.15791 of 2023
in
SA(MD)SR.No.49843 of 2021

PADAMMAL (DIED)

1.GURU VENKATA SUBRAMANIAN

2 VENKATESWARAN (DIED)

3 MUTHULAKSHMI

... PETITIONERS/ APPELLANTS

Vs

PERIYASAMY (DIED)

1.MURUGESAN

2 SARATHA

3 BALUCHAMY

4 SANTHI

5 ANNAKAMU

6 KAMAPANDITHAN



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7 VALLIAMMAL
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MEENATCHIAMMAL (DIED)

8 PALANIAMMAL

9 AKKAMMAL

10 NAGAMMAL

... RESPONDENTS/RESPONDENTS

Civil Miscellaneous Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to exempt the petitioners herein from impleading the legal heirs of the deceased respondents 5,9 and 10 in the above Second Appeal and thus render justice.

PRAYER IN SA(MD)SR.No.49843 of 2021:

To set aside the Judgment and Decree dated 04.01.2018 passed in A.S.No.42 of 2013 on the file of the Additional Subordinate Judge, Dindigul, confirming the Judgment and Decree dated 11.01.2013 passed in O.S.No.753 of 1985 on the file of the Principal District Munsif Court, Dindigul, and allow the Second Appeal.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.J.ANANDHAVALLI, Advocate for the petitioners and of MR.G.BALAJI, Advocate on behalf of the Respondent No.1, the court made the following order:-

This petition is filed by the appellants/plaintiffs in the suit. The suit was filed for specific performance. The notice issued to respondents 5, 9 and 10 returned stating that the respondents 5, 9 and 10 died. Now the petitioners have filed this petition praying to exempt the petitioners from impleading the legal heirs of the deceased respondents 5, 9 and 10.



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2. The reason stated in the affidavit is that the 5th respondent herein namely Annakamu is one of the legal heirs of the first defendant, entered appearance in the Trial Court and adopted the written statement filed by the 9th defendant in the suit. The 5th respondent herein did not contest the appeal suit. Therefore, the petitioners are praying to exempt them from impleading the legal heirs of the 5th respondent. Accepting the said contention, the said prayer is allowed to the extent of 5th respondent.

3. As far as the 9th respondent Akkammal is concerned, she is one of the sisters of the deceased first defendant and she was impleaded in the suit as per the direction of the Appellate Court in the Appeal Suits in A.S.No.51 of 1998 and A.S.No.194 of 1999. The 9th respondent herein contested the suit stating that the suit property is her father's property and so she has right in the suit property and the 1st defendant has no right to execute the sale agreement, dated 02.01.1985, in favour of the plaintiffs. The 9th respondent herein also stated that a partition suit is filed regarding her father's property. It is submitted that the said partition suit in O.S.No.2075 of 1990 was dismissed, against which A.S.No.45 of 1998 was filed and the same was also dismissed against which a second appeal is preferred and the same is pending before this Court.



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4. In the above said partition suit, the 9th respondent has not included the present suit property as her father's property for partition against her brother. Hence, she has no say in the present suit property, claiming as the same as her father's property. Hence, the petitioners are seeking permission to exempt them from impleading the legal heirs of the 9th respondent. Accepting the said contention, the said prayer is allowed to the extent of 9th respondent as well.

5. As far as the 10th respondent herein namely Nagammal is concerned, she is one of the legal heirs of the first plaintiff and she was originally impleaded as 4th plaintiff. Thereafter, transposed as 12th defendant in the suit. The plaintiffs 2 and 3 claim right in the suit property as legatee under the Will executed by the 1st plaintiff. The 10th respondent herein has not challenged her transposition. Therefore, she is not a necessary party in the suit for specific performance as she is coming under 1st defendant as her right is effectively contested by the 1st respondent. Hence, the petitioners are seeking permission to exempt them from impleading the legal heirs of the 10th respondent. Accepting the said contention, the said prayer is allowed to the extent of 10th respondent as well.



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6. For the aforesaid reasons, the Civil Miscellaneous Petition is allowed.

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sd/-
04/03/2024

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Sub-Assistant Registrar (CS-I / II/ III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

tmg

TO

1.THE ADDITIONAL SUBORDINATE JUDGE, DINDIGUL.

2.THE PRINCIPAL DISTRICT MUNSIF, DINDIGUL,

+1. C.C. to J.ANANDHAVALLI Advocate SR.No.2821 dated 06.03.2024

ORDER

IN

CMP(MD) No.15791 of 2023

in

SA(MD)SR.No.49843 of 2021

Date :04/03/2024

RK/VR (07/03/2024) 5P / 4C

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