

IN THE I ADDITIONAL DISTRICT & SESSIONS COURT AT CUDDALORE

Present: Thiru. **S. Prakash**, B.Sc., B.L., LL.M.,
1st Additional District & Sessions Judge (FAC),

Tuesday, the 12th day of September 2023

I.A.No. 476 of 2022 in O.S.No. 362 of 2019

(CNR No. TNCD01-012916-2019)

Rajamani Ammal

... Petitioner / Plaintiff

/Vs/

Arumbu Ammal

... Respondent / Defendant

This Petition came up before me for final hearing on 02.09.2023 in the presence of Thiru. M. Balathaundayuthem, Advocate for the Petitioner and Thiru. S. Ram Mohan, Advocate for the Respondent and upon hearing the arguments on both side and upon perusing the case records and having stood over for consideration till this day and this Court delivered the following:

ORDER

1. The instant Petition was filed under order XXIII Rule 1 and 2 r/w. Sec.151 of Code of Civil Procedure, seeking permission to withdraw the suit in so far Item No. 7 of the suit schedule property, with the liberty to file fresh suit in respect of all the properties that belongs to the estate of deceased Chidambaram, including the suit Item No.7 in this suit.

Brief averments of the petition filed by the plaintiff :

2. The petitioner / plaintiff filed the above suit for partition. The averments in the plaint may be read as part and parcel of this affidavit. The petitioner / plaintiff, filed the suit in respect of the estate of Parasuraman, who

died intestate on 25-1-2017 leaving petitioner (Mother) and the respondent/defendant (his widow) who are his legal heirs and he had no issues. On his death, the petitioner entitled to $\frac{1}{2}$ share in estate described in the suit, as per Law. So, the petitioner filed the above suit for partition. In the suit item No. 1 to 6 are self acquired properties as detailed in the plaint and the Item No.7 was being enjoyed by deceased Parasuraman as his ancestral property and hence petitioner filed the above suit in respect of all the 7 items of properties. Now the defendant has filed written statement inter alia contending in para 13 and 14, that Chidambaram, petitioner's husband owned other properties and contended that the suit is bad for non joinder of other heirs of Chidambaram and for partial partition and petitioner not included all the properties left by Chidambaram which belonged to his estate. The inclusion of item No.7 which belonged to the estate of Chidmabram is only a formal defect. It was included since Parasuraman was enjoying the said property. If all the properties which belonged to the estate of Chidambaram are included in this suit, it will be beyond the scope of this suit, since the above suit is filed in respect of estate of Parasuraman only. So petitioner may be permitted to withdraw the above suit so far item No.7 is concerned which belong to the estate of deceased Chidambaram, with liberty to file fresh suit in respect of all the properties of Chidambaram impleading all the heirs of Chidambaram as otherwise petitioner will suffer irreparably.

Gist of the Counter filed by the Respondent :

3. The allegations in Para 3 to 5 of the affidavit are denied. The petition is

abuse of process of law and liable to be dismissed in limini. No proper reason has been attributed by the petitioner for the withdrawal of the suit, who at the age of 85 wanted to have liberty to file a fresh suit. The plaintiff wanted to impleading the other legal heirs of late. Chidambaram and wanted to include the left out properties of Chidambaram, which he has stated is a formal defect. The defect can be cured by filing an impleading application and filing amendment application. This application under order 26 Rule 1 & 2 is barred by the principles of limitation, estoppel and acquiescence. There is no merit in the application filed by the petitioner. Hence, it is prayed that this Honorable Court may be pleased to dismiss the petition with cost and thus render justice.

Points for consideration :

4. Whether the Petitioner / Plaintiff filed by the Petition under order XXXIII Rule 1 and 2 r/w. Sec.151 of Code of Civil Procedure, seeking permission to withdraw the suit, with the liberty to file fresh suit in respect of suit Item No.7 and other properties, is maintainable ?

On the Points :

5. Heard both sides. Petition, Counter and case materials are carefully perused and considered. In the light of arguments advanced from the side of counsels appearing for the litigants.

6. On perusal of case records, the plaintiff being Mother of Parasuraman, S/o. Chidambaram, filed a suit for partition seeking half share in the suit schedule A, B and C properties. The defendant is the Wife of the said

Parasuraman, S/o. Chidambaram. It is the specific case of the Petitioner/Plaintiff, that she had filed the suit for the partition on the estate left by the Parasuraman, S/o. Chidambaram. It was contended by the counsel for the Petitioner/Plaintiff that due to oversight the ancestral property was mistakenly added in the suit schedule. It was further clarified that the Item No. 1 to 6 in suit schedule A property are self acquired properties of deceased Parasuraman. Being Class – I Legal Heir, the Plaintiff entitled for half share. Thus, she wanted to delete the Item No.7 and seeking liberty to fresh file suit in respect of an estate left by deceased Chidambaram, who is the Husband of the plaintiff and Father in Law of the defendant.

7. On the other hand, the learned counsel for the Defendant contended that the plaintiff can very well implead all the legal heirs in the present suit with reliefs. There is no any justification in filing a separate suit on estate of Chidambaram, when the plaintiff is aged about 85 years. The defects can be cured by filing an impleading as well as amendment application. It was also contended that the present relief is barred by the principles of limitation, estoppels and acquiescence.

8. This Court carefully considered rival contention on the relief sought in this application. Admittedly, the present suit was filed by the plaintiff in the capacity of Class – I Legal Heir of deceased Parasuraman, S/o. Chidambaram. The plaintiff is the Mother of said Parasuraman and the defendant is Wife of the said Parasuraman. The said Parasuraman had no issues through the defendant

during his life time. The cclaim of the Plaintiff based on the self acquired properties of deceased Parasuraman, S/o. Chidambaram. In such circumstances, the inclusion of Item No.7 in schedule A property will change the ambit of the litigation, since, the source and nature succession of Item No.7 are different.

9. In such circumstances, the petitioner/plaintiff's demand appeared as bonafide and as such this Court inclined to allow this application. At the same time, the defendant is at liberty to raise all these objections in the proposed suit, if any filed for the estate left by deceased Chidambaram, in a manner known to law.

Conclusion :

10. In the result, the Petition under Order XXIII Rule 1 and 2 R/w. Sec.151 of Code of Civil Procedure, is allowed by permitting the Plaintiff to withdraw the suit inrespect of Item No.7 of schedule A of suit properties in O.S. No.362 of 2019. The petitioner/plaintiff is also liberty to file fresh suit inrespect of Item No.7 along with other properties in manner known to law. No Costs.

// Dictated to the Steno-Typist, written and transcribed by her, corrected and additions made by me in my official Laptop and pronounced by me in open Court on this the 12th day of September 2023 //

**I Additional District & Sessions Judge (FAC),
Cuddalore.**

Both sides Exhibits and Witnesses :- Nil

**I Additional District & Sessions Judge (FAC),
Cuddalore.**