

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE, DINDIGUL.

PRESENT : Thiru. P. Saravanan, B.L.,

ADDITIONAL DISTRICT JUDGE, DINDIGUL.

Friday, the 07th Day of January 2022

I.A. No.220/2018

in

O.S. No.107/2015

1. Selvaraj

2. Pappu ... Petitioners/Pro 7 and 8th defendants

-Vs-

1. Chinnamatha Naicker 1st Respondent/Plaintiff

2. Pommuthai

3. Samiappan @ Thangapandiyan

4. Panthi Pommuthai @ Rajammal (**Died**)

5. Ammanimmal

6. Samikkannu

7. Sivapandi ... 2nd to 7th Respondents/1 to 6th Defendants

8. Thangaraj

9. Sivakumar

10. Rajendran

11. Dhanalakshmi

(8th to 11th respondents are impleaded as L.Rs.
Of the deceased 4th respondent as per order
in I.A. No.53/2019, dated 06.07.2020)

... 8th to 11th Respondents/7th to 10th Defendants

This petition came up on 20.12.2021 before me for final hearing in the presence of Thiru. S. Harihara Ramachandran, Advocate for the petitioners and of Thiru. K. Muthuvel, Advocate for the 1st respondent/plaintiff and of Thiru. A. Jahangeer, Advocate for the 2nd to 4th respondents and of Thiru. S. Vijayarajan, Advocate for the 5th respondent and the 6th to 11th respondents are called absent and set exparte and after having heard the arguments of both side and on perusal of records this Court delivers the following :

ORDER

Petition filed Under Order 1, rule 10 of C.P.C., to implead the petitioners as 11 and 12th defendants in the above suit.

2. Brief averments of the petition as follows :

The petitioners were born to the first respondent and Pappathi.

Pappathi died in the year 1995. While Pappathi was alive in the year 1985, the 1st respondent/plaintiff married one Mareeswari. For Mareeswari, Two daughters and One son were born. The petitioners and the first respondent were jointly lived till 2009. In the Ration Card issued by the Government, also mentioned that the petitioners and the 1st respondent were lived at Door No.12/466, Sendurai Village. The petitioners came to know that the first respondent/plaintiff filed the above suit for partition. House property mentioned in the suit schedule properties is a joint family property of the petitioners and the first respondent. The first respondent/plaintiff is acting as against the interest of the petitioners. Hence, the petitioners filed the above application to implead them as 11th and 12th defendants in the above suit.

3. **Brief averments of the 1st respondent's counter :**

The 1st respondent/plaintiff denies the marriage and the petitioners' paternity. In the year 1979, the 1st respondent got married Mareeswari. During the wedlock, two daughters and one son were born. The Selvaraj name mentioned in the Ration Card is not pertaining to the 1st respondent. Selvaraj name mentioned in the Ration Card is pertaining to the 1st respondent's brother's son. The petitioners

are not necessary parties to the suit. Hence, pray to dismiss the application.

4. **Points for consideration** : Whether the petitioners are entitled the relief as prayed for ?

5. **POINTS** : The 1st respondent is the plaintiff in the above suit. The suit filed by the plaintiff as against the L.Rs. of the plaintiff's brother. The case of the plaintiff is that the suit properties are the ancestral properties of the Samiyappa Naicker. For Samiyappa Naicker, Andimuthu Naicker, Periyannatha Naicker and the plaintiff are the legal heirs. According to the plaintiff, Samiyappa Naicker died intestate. Hence, for partition to divide 1/3 share in the suit properties and for declaration, declaring the settlement deed said to have been executed by his brothers is null and void, the above suit has been filed. The 7th defendant filed written statement supporting the case of the plaintiff, whereas the other defendants filed their written statement by stating that except suit items 2, 3, 4 and 9, in the remaining suit properties the plaintiff is entitled partition relief. Issues already framed and suit is in part–heard stage. At this stage, the present application has been filed by the petitioners.

6. The main contentions of the petitioners is that the petitioners were born to the 1st respondent and the Pappathi. While the first marriage was in existence, the first respondent married one Mareeswari. Since the suit properties are the joint family properties of the petitioners and the first respondent, the petitioners are necessary parties for the suit. Per contra, the first respondent case is that there is no relationship between the petitioners and the first respondent, and the petitioners were not born to the first respondent. In these circumstances, the court has to see that whether the petitioners are proper and necessary parties for the suit. The first respondent/plaintiff filed the above suit for partition as against the L.Rs. Of the plaintiff's brother. In the above suit plaintiff's sons and daughters are not a party. The issues is to be decided in the suit is that whether the plaintiff is entitled 1/3 share in the suit schedule properties or not. Pending this application, 4th respondent/3rd defendant died. Her legal heirs were already added as 7th to 10th defendants in the above suit. Originally this application filed to implead the petitioners as proposed 7th and 8th defendants in the above suit. Since, the 3rd defendant's legal heirs were added as 7th to 10th defendants in the suit, the proposed defendants rank has been changed in this application by this court suo-motu. If the plaintiff succeed in the suit, then only his issues will get right over the suit properties.

In these circumstances, for deciding the issues in the suit, the petitioners are neither necessary parties nor proper parties. Hence, the petitioners are not entitled the relief as prayed for and answer this issue accordingly.

In the result, this petition is dismissed. No cost.

This Order is dictated to my Steno-Typist and transcribed by her and typed by her in the computer, Printed in the Printer, corrected and pronounced by me in the open court, on this the 07th day of January 2022.

Additional District Judge,

Dindigul.

**Additional District Court,
Dindigul.**

I.A. No.220/2018

in

O.S. No.107/2015

ORDER : FAIR

Dated : 07.01.2022.