

IN THE COURT OF THE II ADDITIONAL DISTRICT COURT, SALEM.

Present: Tmt. L.Kalaivani, B.A.,B.L.,

II Additional District Judge, Salem.

Monday, the 9th day of September 2024.

I.A.01/2023

in

G.O.P.101/2023

C. Sivakumar

.. Petitioner

/Vs/

P. Jayanthi

.. Respondent

This petition is taken on the file on 11.10.2023 in the presence of Thiru. S.Rajkumar, learned counsel for the petitioner and Thiru. S.Christopher, learned counsel for respondent, upon hearing arguments and perusing relevant records, having stood for consideration till date this court delivered the following:-

ORDER

The petitioner has come forward with the present petition under Order 1 Rule 10 CPC to implead him as respondent in the GOP 101/2023.

2. Concise of the petition is as follows:-

The petitioner is the nephew and the respondent is the niece of one Chandrappan. The above said Chandrappan was the propitious in the family and the said Chandrappan married one Rajambal as his wife long back and out of the wedlock between the Chandrappan and Rajambal a son namely Palaniappan and a daughter namely Mangayarkarasi were born. The marriage between the petitioner and said Mangayarkarasi was solemnized on

14.04.2000 and out of the said wedlock there were no issues. The son of the Chandrappan married the respondent in the year 2006 and a daughter was born to the respondent and the said Palaniappan. The wife of the petitioner namely Mangayarkarasi was died on 19.07.2001 leaving behind the petitioner.

The husband of the respondent namely Palaniyappan was died on 15.11.2015 intestate leaving behind the respondent and the daughter of the respondent namely Nandhika as the legal heirs. The wife of the Chandrappan namely Rajambal was died on 21.05.2021 leaving behind the petitioner, the respondent and her daughter. The petition mentioned property and other properties are the ancestral properties of the father-in-law of the petitioner and also the respondent. The petitioner has got half share in the entire properties. Therefore, the petitioner demanded to divide the properties and allot a share to the petitioner. But, the demand was not complied. Consequently, the petitioner has filed a suit in OS.224/2023 on the file of III Additional District Judge, Salem for the partition and other reliefs in which the respondent and her daughter are the parties and they have appeared in the suit through their counsel. Subsequently, they failed to filed written statement. The respondent after the receipt of summon in the suit in OS.224/2023 has filed this GOP 101/2023 without adding the petitioner as party seeking permission to sell the part of the suit property in Survey No.639/3A2 as if the respondent and her daughter alone are the absolute owners.

In order to deprive the petitioner and defeat his share in the suit property the respondent has filed GOP 101/2023 by suppressing the existence of the petitioner. In fact the petitioner also the legal heir of the Mangayarkarasi and he succeeded the estate of Mangayarkarasi. Therefore, the petitioner has filed a writ before the Hon'ble High Court to quash the legal heir certificate issued in favour of the respondent dated 23.11.2017 and the

Hon'ble High Court directed the Revenue Divisional Officer, Sankari to conduct enquiry and issue a Special legal heir certificate within 6 weeks. Accordingly, the Revenue Divisional Officer conducted enquiry and issued fresh legal heir certificate by including the name of the Mangayarkarasi on 03.08.2023. The respondent has filed the said GOP by suppressing half share of the petitioner over the suit property. The petitioner is the necessary party to these proceedings and in the absence of the petitioner no effective adjudication can be made. Thus, this petition is liable to be allowed.

3. The averments in the counter filed by the respondent is as follows:-

The respondent has denied the averments stated in the petition except those are specifically admitted by her. The petition mentioned property and other properties are absolutely belonged to Chandrappan. The respondent is the daughter in law of the Chandrappan. It is true that the said Chandrappan had two children namely Palaniappan, who is the husband of the respondent and Mangayarkarasi who is the wife of the petitioner. The Mangayarkarasi was married the petitioner on 14.07.2000. Immediate after a year of the marriage, the said Mangayarkarasi was died suspiciously and she pre-deceased her brother and her parents and she passed away on 19.07.2001 without any issues.

After the demise of Mangayarkarasi the petitioner be never in the conduct with his wife's family and it has come to the knowledge of the respondent the petitioner had engaged himself in another matrimonial relationship soon after the death of the Mangayarkarasi. Husband of the respondent namely Palaniappan pre deceased to his parents and he passed away on 15.11.2015 leaving behind the respondent and her daughter to succeed his estate. The respondent had taken care of her in laws after the death of her husband. The Chandrappan was died on 05.09.2017 leaving

behind the wife Rajambal, the respondent and her daughter. Hence, the Tahsildar, Sankari has issued legal heir certificate on 23.11.2017.

The petition mentioned properties are the ancestral properties of Chandrappan and after his demise the wife Rajambal, the respondent and her daughter have partitioned a portion of property on 10.01.2019. Later-on the mother-in-law of the respondent died on 11.05.2021. After the demise of Chandrappan and his wife Rajambal being their legal heirs the petition mentioned property devolves upon the respondent and her daughter. As per Sec.8 of Hindu Succession Act, the respondent and her daughter alone entitled to get the share of the mother-in-law.

As per Sec.15(2) (a) of Hindu Succession Act if a female acquires a property from her father and if she died without any children the property will devolve upon the legal heirs of her father not upon her husband. The daughter of the Chandrappan namely Mangayarkarasi was died without any issues and the property succeeded if any by the Mangayarkarasi from her father would devolve upon the legal heirs of her father. Therefore, the present petition is not maintainable. The petitioner has obtained the legal heir certificate only on 13.07.2022, six years after the demise of Chandrappan. Hence, it is prayed for dismissal.

4. Point for consideration :

Upon considering the petition, counter and other materials this court has framed the following point for consideration:

1. Whether this petition is liable to be allowed or not?

5. Answer to the Point :

This petition has been filed by the petitioner u/Or.1 R.10 CPC to implead him as the respondent in the GOP.101/2023. It is the contention of the petitioner that one Chandrappan had a daughter namely Mangayarkarasi.

The marriage between the petitioner and said Mangayarkarasi was solemnized on 14.04.2000 and out of the said wedlock there were no issues. The son of the Chandrappan married the respondent in the year 2006 and a daughter was born to the respondent and the said Palaniappan. The wife of the petitioner namely Mangayarkarasi was died on 19.07.2001 leaving behind the petitioner. The son namely Palaniyappan was died on 15.11.2015 intestate leaving behind his wife who is the respondent and her daughter namely Nandhika as the legal heirs. Therefore, the petitioner has got half share in the entire properties. Hence, the petitioner demanded to divide the properties and allot a share to the petitioner. But, the demand was not complied. Consequently, the petitioner has filed a suit in OS.224/2023 on the file of III Additional District Judge, Salem for the partition and other reliefs in which the respondent and her daughter have been arrayed as parties and they have appeared in the suit through their counsel. Subsequently, they failed to file written statement. While so, the respondent, after the receipt of summon from the suit in OS.224/2023, has filed this GOP 101/2023 without adding the petitioner as party seeking permission to sell the part of the suit property in Survey No.639/3A2 as if the respondent and her daughter alone are the absolute owners. Therefore, the petitioner submits that he is also a necessary party to these proceedings since his interest is also involved. Further, the petitioner has placed reliance upon the judgment rendered in the case of **Shilpa vs. Marappa and others** in CRP (PD) No.164/2022, dated 03.02.2022 of our Hon'ble High Court, wherein it has observed as follows :

“The plaintiff having been born in the year 1991, undoubtedly, became a coparcener by her birth by operation of Act 1 of 1990. The 2005 Act namely, Central Act makes a daughter of a coparcener, a coparcener by birth. The exemption is only to alienations made prior to the Act. The disqualification of marriage does not exist. The Central Act would undoubtedly prevail from the

date of its enactment but, the same will not have the effect of taking away the right, which is vested with the daughter prior to its enactment, unless it is specifically says so. There is no such provision in Act 39 of 2005, which takes away rights that were conferred on daughters under the state Act namely, Act 1 of 1990.

Therefore, it is clear to my mind that the learned Sub-ordinate Judge was wrong in concluding that the state Act will not apply to Hindu women in Tamilnadu after enactment of Act 39 of 2005. The rights conferred under the state Act prior to the enactment of the Central Act will remain intact. Hence, this civil revision petition is allowed”.

6. Per contra, the respondent would contend that the Chandrappan had two children namely Palaniappan, who is the husband of the respondent and Mangayarkarasi who is the wife of the petitioner. The Mangayarkarasi was married the petitioner on 14.07.2000. Immediate after a year of the marriage the said Mangayarkarasi was died suspiciously and she predeceased her brother and her parents and she passed away on 19.07.2001 without any issues. After the demise of Mangayarkarasi the petitioner be never in the conduct with his wife's family and it was brought to the knowledge of the respondent that the petitioner had engaged himself in another matrimonial relationship soon after the death of the Mangayarkarasi. As per Sec.15(2) (a) of Hindu Succession Act if a female acquires a property from her father and if she died without any children the property will devolve upon the legal heirs of her father not upon her husband. While so, the daughter of the Chandrappan namely Mangayarkarasi was died without any issues and the property succeeded if any by the Mangayarkarasi would devolve upon the legal heirs of her father. Therefore, the present petition is not maintainable. To canvas his contention the respondent placed reliance upon the following Judgment

reported in **Mottaiyandi Chettiar (died) and others vs. Saroja (died) and others- 2017 (2) CTC 321** wherein it has been held as follows:

“After referring to the principles on the interpretation of a Statute, as held by the Hon'ble Supreme Court, in all the above Judgments, out of context, the learned Counsel for the Respondent further submitted that Section 15(2) of the Hindu Succession Act, 1956, is not applicable to a case where the Female Hindu dies intestate leaving her husband, who is entitled to inherit her properties along with her children. The submission of the learned Counsel for the Respondent are devoid of any merits having regard to the plain language of the relevant provisions. When the Hon'ble Supreme Court and this Court has specifically reiterated the legal position that Section 15(2) is an exemption, the arguments of the learned Counsel for the Respondent are absurd”.

7. Considering the rival submissions, Order 1 deals with the subject of parties to suits and inter alia with the joinder, misjoinder and non-joinder of parties. It is to be borne in mind that there is a distinction between necessary party and proper party. A necessary party is one whose presence is indispensable to the continuation of the suit and without whose presence no effective order can be passed. His presence enables the court to adjudicate more effectually and completely. Therefore, there is no dispute with regard to the position of law that if a person is likely to be affected by a decree or order, he can't be arrayed as a party.

8. In the instant case, it is noted that already an original suit is filed for the relief of partition by the petitioner in OS.224/2023 on the file of III Additional District Judge, Salem as against the respondent wherein the present petition mentioned property is also included. The present Original Petition is filed so as to get permission from the court to alienate the property mentioned in the suit in OS 224/2023. Assuming that the petition is allowed

and the respondent is permitted to alienate the property, the petitioner's right in the original suit will be affected and the present property may not be available for partition. Though the respondent contents that the petitioner has got no right to get share quoting the devolution of property through lineage, the said question cannot be decided in this application for implement of party and the said question will be decided in the suit in OS 224/2023 on the file of III Additional District Judge, Salem. It is well established principle of law that the merit of the claim cannot be decided in an interlocutory application. Therefore, since the petitioner seems to be a necessary party to the proceedings, this court is inclined to allow the application.

In the result, the petition is allowed. No Cost.

Dictated to the typist, typed by her directly, corrected and pronounced by me in the open court, this the 9th day of September 2024.

II Additional District Judge,
Salem.