

**(2010) 11 MAD CK 0161**

**In the Madras High Court**

**Case No :** C.R.P. (PD) No. 3217 of 2010 and M.P. No. 1 of 2010

Soundararajan

APPELLANT

Vs

H. Mahitha and R. Devaraj

RESPONDENT

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**Date of Decision :** 30-11-2010

**Acts Referred:**

**Citation :** (2011) 4 MLJ 126 : (2011) 6 RCR(Civil) 1769

**Hon'ble Judges :** R.S. Ramanathan, J

**Bench :** Single Bench

**Advocate :** K. Kalyanasundaram, for the Appellant; V. Raghavachari, for C. Selvaraj, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

R.S. Ramanathan, J.—The Plaintiff in O.S. No. 840 of 2008 on the file of the I Additional District Judge, Coimbatore, is the revision Petitioner herein.

2. The Respondent herein filed an application in I.A. No. 1730 of 2009, to implead himself as the second Defendant and that application was allowed and as against the same, this revision petition is filed.

3. It is submitted by Mr. K. Kalyanasundaram, the learned Counsel appearing for the revision Petitioner that the revision Petitioner filed the suit for specific performance of an agreement of sale, executed by the second Respondent herein and in a suit for specific performance, third party cannot be impleaded and only the parties, who are parties to the contract can be impleaded and without appreciating the same, the Court below allowed the application. It is his further submission that the first Respondent is the daughter of the second Respondent and the properties were the ancestral properties in the hand of the second Respondent and there was a partition of joint family between the second Respondent and his son on 27.04.1987. In that partition, the suit property was allotted to the second Respondent and when the partition took place in the year 1987, the first Respondent had no right over the ancestral property and she got

her right, after the passing of the Hindu Succession (Amendment) Act, 1989. Therefore, she is not a necessary party to be impleaded.

4. Per contra, Mr V. Raghavachari, the learned Counsel appearing for the Respondents submitted that as per the judgment of the Hon'ble Supreme Court reported in Sumtibai and Others Vs. Paras Finance Co. Regd. Partnership Firm Beawer (Raj.) Thru Smt. Mankanwar Chordia (Dead) and Others, in a suit for specific performance, the third party cannot be impleaded, if he has no semblance of title or interest in the property in dispute. Therefore, the busy body or interloper with no semblance of title cannot be impleaded in such a suit. However, that does not mean that the third party, who shows some semblance of title or interest in the property in dispute, cannot be impleaded as one of the parties. Relying upon the said judgment, learned Counsel appearing for the Respondents submitted that the case of the first Respondent is that she is the daughter of the second Respondent and she is also a co-parcener, having a share in the suit property. Therefore, she is claiming right over the suit property and she has not admitted the partition entered into between the father and son and hence, she is a necessary party to be impleaded.

5. It is seen from the order of the Court below that the Court below allowed the application on the ground that no prejudice would be caused to the Plaintiff by impleading the first Respondent and further held that in the another suit filed by the revision Petitioner in O.S. No. 8 of 2009, the first Respondent was already made a party and therefore, in the suit, she can be impleaded.

6. According to me, the reason for allowing the application by the Court below is not correct, but I find no infirmity in allowing the application filed by the first Respondent. It is the specific case of the first Respondent that the first Respondent is the daughter of the second Respondent and she is also a co-parcener, having a share in the suit property. It is not in dispute that the suit property was ancestral property in the hands of the second Respondent. It is the case of the revision Petitioner that there was a partition between the second Respondent and his son in the year 1987 and the suit property was allotted to the share of the second Respondent and at that time, the first Respondent was not a co-parcener and therefore, she cannot question the partition and the property in the hands of the second Respondent is absolute property of the second Respondent and therefore, the first Respondent cannot claim any right over the suit property. It is seen from the judgment referred to above, that the Hon'ble Supreme Court distinguished the judgment referred in Kasturi Vs. Iyyamperumal and Others, and observed as follows:

In our opinion, the aforesaid decision is clearly distinguishable. In our opinion, the aforesaid decision can only be understood to mean that a third party cannot be impleaded in a suit for specific performance if he has no semblance of title in the property in dispute. Obviously, a busy body or interloper with no semblance of title cannot be impleaded in such a suit. That would unnecessarily protract or obstruct the proceedings in the suit. However, the aforesaid decision will have no

application where a third party show some semblance of title or interest in the property in dispute.

7. In this case also, it cannot be stated that the first Respondent had no semblance of title. Whether the first Respondent can claim any right over the suit property can be decided only during trial. Having regard to the fact that the first Respondent claims share in the suit property and also to the fact that the suit property was ancestral property in the hands of the second Respondent, to have binding decree, the first Respondent is a necessary party to to the proceedings and the Court below has rightly allowed the application. Hence, I do not find any reason to interfere with the order of the Lower Court and this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.