



C.R.P(MD)No.254 of 2022

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.07.2024**

CORAM

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P(MD)No.254 of 2022

and

C.M.P(MD)No.1127 of 2022

1.J.Dhanabalan

2.D.Sivagami

... Petitioners/3rd Party

Vs.

1.Muniyammal

2.Maruthayee

3.Meenal

4.Alagammal

5.Jeyanthi Mala

... Respondents 1 to 5/Plaintiffs

Periyakaruppi (Died)

... 1st Defendant

6.Vijaya Manickam

7.Muthu Selvam

8.Muthalagu

... Respondents 6 to 8/Defendants 2 to 4

1/10



C.R.P(MD)No.254 of 2022

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the judgment and decree passed in O.S.No.126 of 2013 on the file of the Sub-Court, Sivagangai, dated 03.01.2014 by allowing this revision.

For Petitioners : Mr.H.Arumugam
for Mr.N.Vignesh

For R-1 to R-3 : Mr.S.R.A.Ramachandran
Additional Government Pleader

For R-1 to R-5
& R-8 : Mr.N.Tamilmani

ORDER

The Civil Revision Petition is directed against the judgment and decree passed in O.S.No.126 of 2013, dated 03.01.2014.

2. It is the contention of the learned Counsel for the petitioners that, one Periyakaruppi is the owner of the suit property. She had executed a power of attorney in favour of the first petitioner and when the power was in force, the first petitioner sold the property in favour of the second and third petitioners. Aggrieved by the same, already the said



C.R.P(MD)No.254 of 2022

Periyakaruppi filed O.S.No.128 of 2012, whereby, she had claimed reliefs to declare that the sale deeds, dated 22.08.2011 and 09.02.2012 and one mortgage deed, dated 22.08.2011 are all null and void and she has also claimed a consequential permanent injunction not to create any other encumbrance in respect of the suit schedule property. The said suit is still pending. As a matter of fact, the said Periyakaruppi originally plaintiff had died pending the suit (i.e.,) on 23.03.2018 and all her legal heirs are now brought on record as the plaintiffs. While so, to short circuit the decision in the said suit between the parties, even during the lifetime of the said Periyakaruppi, the present suit in O.S.No.126 of 2013 is filed by some of the legal heirs of Periyakaruppi and arraying the said Periyakaruppi and the other legal heirs as the defendants. Conveniently, the said Periyakaruppi did not appear and was set *ex parte* by the Court and the remaining legal heirs had recorded a Memo of compromise as if they are in possession and enjoyment of the property and allotting shares in between themselves. The said suit is nothing but an abuse of process of law so as to wrest possession from the petitioners. When the question as to the possession of the property and the ownership of the property is a



C.R.P(MD)No.254 of 2022

subject matter of *lis* between the parties in O.S.No.128 of 2012, this decree has no legs to stand and hence, the Civil Revision Petition.

3. Per contra, the learned Counsel appearing on behalf of the respondents would submit that, when it is the case of the plaintiffs being the daughters of the said Periyakaruppi, they had filed the suit as against the mother and the brothers because, the entire suit property was ancestral in nature and the daughters cannot be excluded from possession and enjoyment. Even assuming that the title of the parties to the suit in O.S.No.126 of 2013 will be subject to their success in O.S.No.128 of 2012, even then it is only a suit for partition and if only they succeed in O.S.No.128 of 2012, the partition inter parties between them which is not going to affect the petitioners herein, therefore, there is nothing for this Court to interfere in the compromise decree which is duly passed by the Trial Court, especially, when the petitioners herein are third parties and the decree will not bind upon them.



C.R.P(MD)No.254 of 2022

4. I have carefully considered the submissions made by the learned

Counsel on either side and perused the material records of the case.

5. It can be seen that the said Periyakaruppi, claims title to the suit property through her father. Originally, third parties filed O.S.No.25 of 2002 claiming through the other legal heirs of the common ancestor and the same was decreed on 26.07.2010. As against the same, the said Periyakaruppi herself had filed A.S.No.123 of 2010 and the same was allowed by judgment and decree, dated 08.08.2011. The Court in the said appeal suit had categorically held that, upon considering the oral evidence and documentary evidence on record, Periyakaruppi has got better title to the suit property she having inherited from her father. That being the position, the present suit in O.S.No.126 of 2013 is filed and it is essential to extract paragraph No.4 by which the *lis* is laid:

"4) தாவா சொத்தின் சர்வே எண்.27/5 ஆகும். அதன் விஸ்தீரணம் 15 செண்டாகும். தாவா சொத்தும் இந்த வாதிகள் மற்றும் பிரதிவாதிகளுக்கு பூர்வீகப் பாத்தியப்பட்ட சொத்தாகும். இந்த எண் வாதிகளும் 1ம் பிரதிவாதியின் மகன்கள் ஆவார்கள். 2 முதல் 4 பிரதிவாதிகள் 1ம் பிரதிவாதியின் மகன்கள் ஆவார்கள். தாவா சொத்தும் ஆதி



C.R.P(MD)No.254 of 2022

காலம் தொட்டு இந்த வாதிகள் மற்றும் பிரதிவாதிகளுக்கு பூர்வீகப் பாத்தியப்பட்ட சொத்தாகும். தாவா சொத்திற்கும் 1ம் பிரதிவாதி பெயரில் பட்டா ஏற்பட்டு 1ம் பிரதிவாதி உள்ளிட்ட மொத்த குடும்பத்தின் கூட்டு பாத்திய அனுபவத்தில் இருந்து வருகிறது. 1ம் பிரதிவாதி பெயரில் உள்ள அடங்கல் நகல் 1வது ஆவணமாக தாக்கல் செய்யப்படுகின்றது. இந்த வாதிகளும் திருமணமாகி வெளியூர்களில் குடியிருந்து வந்த போதிலும் இந்த 1ம் பிரதிவாதியும் தாவா சொத்தில் உள்ள கருவேல் மரங்களை வெட்டி அதிலிருந்து வரும் வருமானத்தை வாதிகள் மற்றும் பிரதிவாதிகளுக்கு சமமாக பிரித்துக் கொடுத்து வருவது வழக்கமாக கொண்டிருந்தார்.”

6. Thus it can be seen that the suit itself is laid as if it is the ancestral property and as if the devolution of the property would be as per Section 6 of the Hindu Succession Act. When the property itself belongs to Periyakaruppi and when there is no succession of any male Hindu is involved, the very claim itself is unfounded. Whether it is an *ex parte* situation or whether consent is given by the defendants, still the Court ought not to have passed such a decree. Thus such a decree is would be a nullity in the eye of law. No other motive except the oblique motive to overcome the suit in O.S.No.128 of 2012 can be attributed for



C.R.P(MD)No.254 of 2022

laying such a suit. Even though the petitioners being the third parties, the suit will not affect them, considering the fact that O.S.No.128 of 2012 is still pending between the parties and when the question as to possession is writ large in the said suit, the present exercise, ought not to have been resorted to by the parties. Therefore, the validity is rightly being questioned by the petitioners. I am fully in agreement with the learned Counsel for the petitioner that the judgment of the Hon'ble Supreme Court of India reported in **1994 (1) SCC 1 [S.P.Chengalvaraya Naidu (Dead) By LRs. Vs. Jagannath (Dead) By Lrs. and Others]** would be squarely applicable to the present facts and circumstances of the case. In such a factual scenario, every other procedural argument, should give way and the decree cannot stand. It can be seen that the plaintiffs in the present suit are already the plaintiffs in O.S.No.128 of 2012 also having been brought on record in the place of Periyakaruppi. When all the legal heirs are there in the said suit, even if they want to plead possession, the same can be additionally pleaded in the said suit itself given the fact that the trial is yet to commence in the said suit and therefore this Court is setting aside the decree in O.S.No.126 of 2013.



C.R.P(MD)No.254 of 2022

WEB COPY

7. The decree and judgment passed in O.S.No.126 of 2013 shall stand set aside and consequently, the said suit in O.S.No.128 of 2013 on the file of the District Munsif Court, Tirupattur shall stand dismissed. It is seen that the suit in O.S.No.128 of 2012 is pending for the past 12 years and already a direction is also issued in C.R.P(MD)No.2012 of 2023 to dispose of the suit within a period of six months and that is also now over. In that view of the matter, the Trial Court is requested to take up the suit on a day to day basis and dispose of the same as expeditiously as possible.

8. With the above observations, this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

22.07.2024

NCC : Yes
Index : Yes
Internet : Yes
BTR

8/10



C.R.P(MD)No.254 of 2022

WEB COPY

To

- 1.The Sub-Court,
Sivagangai.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P(MD)No.254 of 2022

D.BHARATHA CHAKRAVARTHY, J.

BTR

Order made in
C.R.P(MD)No.254 of 2022

22.07.2024