

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2016

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

CRP (NPD) No.906 of 2016

- 1.Saravanan
S/o.Sundaramoorthy
 - 2.Devaraj
S/o.Jyothi
 - 3.Minor Harish
S/o.Babu
Rep. by his mother and next friend Nirmala
- .. Petitioners
- Vs
- 1.Elumalai
S/o.Muthuraman Naidu
 - 2.Kumari
W/o.Devendran
 - 3.Nagarani
W/o.Selvaraj
 - 4.Saradambal
W/o.Muthurama Naidu
 - 5.Arumugam
S/o.Thoppula Koundur
- .. Respondents

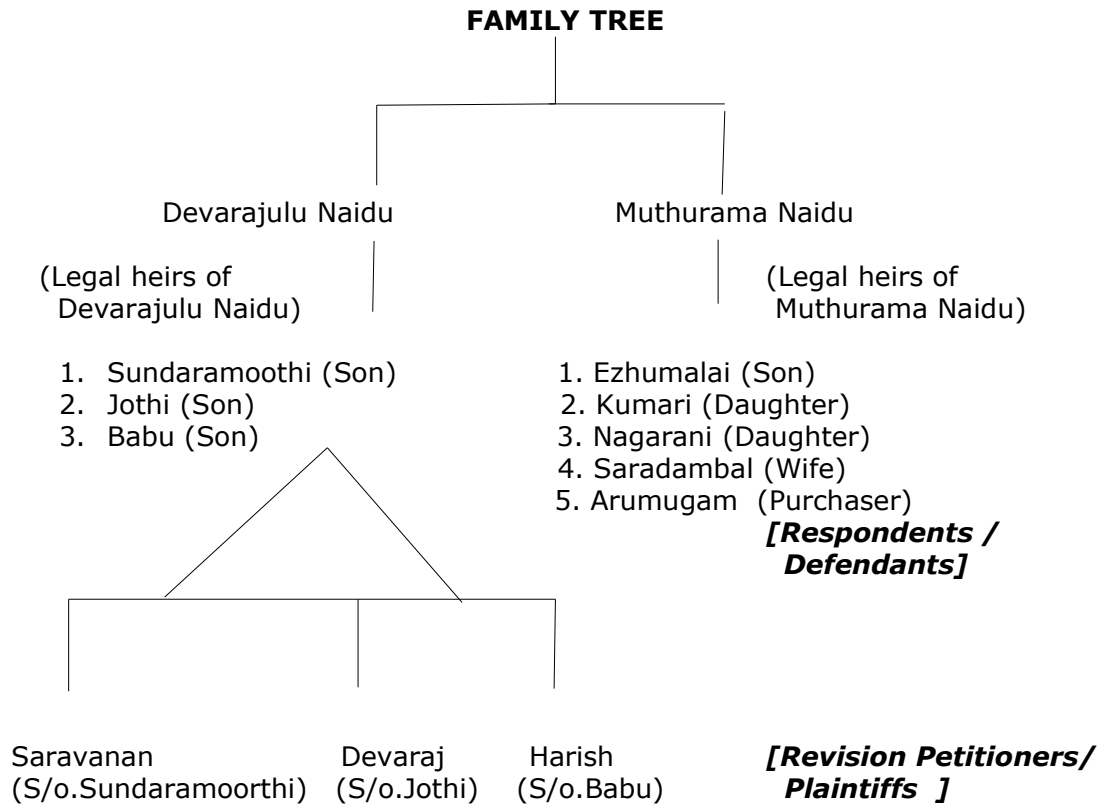
Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 11.02.2016 in unnumbered O.S. on the file of the District Munsif Court, Tirukoilur and direct the Court to number the suit.

For Petitioners

: Ms.R.Meenal

ORDER

The revision petitioners herein have filed the suit on 30.11.2015, seeking the relief of declaration, that the final decree passed in I.A.No.1524 of 1990 in O.S.No.232 of 1982 on the file of District Munsif Court, Thirukoilur, which was confirmed in the appeal in A.S.No.7 of 2001 on the file of Sub Court, Villupuram, is null and void. The relationship between the parties can be better explained in the diagram showing the family tree.



2. It is stated in the plaint (in unnumbered suit) that one Devarajulu Naidu and Muthurama Naidu are the brothers of the Hindu Undivided Family. Devarajulu Naidu is stated to have died on

12.06.1973. After the death of Devarajulu Naidu, a suit for partition in O.S.No.232 of 1981 was filed by Muthurama Naidu against the legal heirs of Devarajulu Naidu viz., Sundaramoorthi, Jothi and Babu (fathers' of the revision petitioners herein) on the file of District Munsif Court, Thirukoilur.

3. The revision petitioners/plaintiffs (in unnumbered O.S.) are the grandsons of Devarajulu Naidu and the respondents/defendants 1 to 3 are the legal heirs of Muthurama Naidu; 4th defendant is the wife of Muthurama Naidu and 5th defendant is the purchaser of few of the schedule mentioned property, which belonged to Muthurama Naidu.

4. Followed by the preliminary decree passed in O.S.No.232 of 1981, an application was filed for passing of final decree, in which Advocate/Commissioner was appointed to inspect and partition the suit property.

5. It is contended in the plaint, that due to the negligent attitude of the fathers' of the revision petitioners herein, valuable properties in the suit mentioned property were allotted to Muthurama Naidu and the properties in bits, left out, are allotted to Sundaramoorthy and his brothers. Challenging the same, an appeal

in A.S.No.7 of 2001 on the file of Sub Court, Villupuram, was filed by the said Sundaramoorthy and his brothers.

5.1. It is also contended in the plaint that the appeal was not prosecuted by the counsels diligently and without even arguing, judgment was delivered and the appeal was dismissed, confirming the trial Court's decree. Aggrieved over the same, the revision petitioners herein have filed the suit before the District Munsif Court, Tirukoilur, seeking to set aside the final decree and to pass a fresh final decree.

6. Accordingly, when the plaint was presented before the District Munsif Court, Tirukoilur, it has been returned on 10.12.2015, raising the question of maintainability.

6.1. This has been represented on 04.01.2016 by the counsel for the plaintiffs stating that the plaint is filed within three years of the minors attaining majority and thus the suit is maintainable under Article 59 of the Limitation Act. But, again, it has been returned with an endorsement that the previous order is not complied with.

7. It was again represented on 18.01.2016 stating that the plaintiffs were not the parties in the earlier suit and were not on record in the earlier proceedings.

7.1. Thereafter, from 29.01.2016 to 11.02.2016, the plaint has been returned without any reasons at all.

8. The Court is expected to state whether the returns that has been complied with, is accepted by the Court or not. Without giving any reasons, the Court below is continuously returning the plaint.

9. The tenor of the order passed by the Court below seems to be, that the plaintiffs are not entitled to challenge the final decree. It is always open to any litigant to challenge any proceedings including the final decree proceedings.

10. At the threshold, the Court is not expected to decline access to the justice. Therefore, the Court below is directed to post the matter for argument regarding maintainability in the open Court and to take a decision after hearing the counsel for the plaintiff.

11. In the result, this Civil Revision Petition is ordered accordingly. No costs.

07.04.2016

ds

*Note : Registry is directed to return the original
plaint to the learned counsel for the revision petitioner.*

To:

The District Munsif Court,
Tirukoilur.

S.VIMALA,J

ds

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