

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2017

CORAM

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

CRP PD.No.430 of 2017

and

C.M.P.No.2002 of 2017

Srikanth J Patel

.. Petitioner

vs

1. Savithramma

2. Lakshmamma

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order made in I.A.No.338 of 2016 in O.S.No.54 of 2008 on the file of the Subordinate Judge, Hosur dated 05.12.2016.

For Petitioner : Mr.Niranjana Rajagopal
for M/s.G.R.Associates

ORDER

The seventh defendant is the revision petitioner challenging the order in I.A.No.338 of 2016 passed by the Court below in refusing to take a preliminary issue in the suit.

2. The revision petitioner is the third party purchaser having purchased the same from the defendants 1 to 6. Subsequent to coming into force of the Hindu Succession Act 39 of 2005, there was an amendment in the plaint, which was filed for partition. The plaintiffs are the daughters of the first defendant in the suit. According to the revision petitioner/7th defendant, whether the plaintiffs are entitled to the benefits of the Hindu Succession Act, has to be decided as a preliminary issue. Once that issue is decided, the rest of the issues would follow since it is stated that the plaintiffs have admitted that the suit property is a joint family property.

3. The said application was resisted by the plaintiffs/respondents contending that the trial has already commenced in the suit and the said preliminary issue can only be decided along with the other issues. Though the suit was filed in the year 2009, the amendment in the plaint was allowed and only in the year 2016, the revision petitioner/seventh defendant has filed the interlocutory application.

4. As rightly contended by the learned counsel for the respondents, whether the plaintiffs are entitled to any share as per the amended Hindu Succession Act, can be decided only in the suit. Whether the objection raised

by the revision petitioner / seventh defendant is prior to the Act or after the Act and the entitlement of the plaintiffs' share in the suit property can be gone into only after full-fledged trial. The purchaser, who is the revision petitioner, however, cannot raise these issues as he himself had purchased an undivided share from the joint family property. Hence, the application was rightly dismissed by the learned trial Judge, which does not warrant any interference.

5. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

13.02.2017

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To

The Subordinate Judge,
Hosur

PUSHPA SATHYANARAYANA.J

srn

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