

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.13 of 2015

1.Velathal
2.Veerathal
3.Selvi.Murugathal @ Poovathal .. Petitioners

Vs.

Karuppathal (deceased)

1.Palanisamy
2.Rangasamy
3.Kaliyammal
4.Valliammal
5.Mayilathal
6.Arukkani
7.Natarajan
8.Janaki
9.Chinnu .. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 13.06.2004 made in I.A.No.900 of 2001 in O.S.No.272 of 1989 on the file of the Subordinate Court, Pollachi, Coimbatore District.

For Petitioners : Mr.C.Veeraraghavan

For R1 : Mr.Mukunth for
M/S.Sarvabhauman Associates

For R2 : No appearance

For R3,5,6 & 8 : No appearance

For R4 : Mr.P.Srinivas

For R7 and R9 : Not ready in notice

ORDER

Civil Revision Petition is filed against the fair and decretal order dated 13.06.2004 made in I.A.No.900 of 2001 in O.S.No.272 of 1989 on the file of the Subordinate Court, Pollachi, Coimbatore District.

2. The petitioners are the defendants 1, 3 and 4 and the respondents are the defendants 1 and 5 to 12 in O.S.No.272 of 1989. The petitioners' mother viz., Karuppathal as a plaintiff filed O.S.No.272 of 1989 for partition. A preliminary decree was passed on 19.08.1992 granting 12/44 shares to the said Karuppathal. The petitioners filed the present I.A.No.900 of 2001 for amendment of preliminary decree and allot 34/66 shares in the suit property as per the Hindu Succession (Tamil Nadu Amendment) Act 1 of 1990.

3. According to the petitioners, first respondent herein, their brother, who is second defendant in the suit, was conducting the case and he has not properly put forth the case of the petitioners that they are entitled to shares as per the amendment to the Hindu Succession Act, in collusion with the other respondents to defeat the interest of the petitioners. The petitioners came to know about the decree only when their maternal uncle Nachimuthu informed about the same in March 2001 and filed the present application for amendment claiming 34/66 shares.

4. The first respondent filed counter affidavit and denied various averments made in the application and contended that their father died on 25.11.1988 and therefore, the petitioners could not seek that as per the amended Hindu Succession Act, they are entitled to shares. On 25.11.1988, there was notional partition and the petitioners are not entitled to raise any new right.

5. The respondents 2, 5 and 8 filed counter affidavit and submitted that the petitioners have filed the present application only at the instigation of their maternal uncle Nachimuthu. Their father married the plaintiff Karuppathal after Bigamy Act and therefore, the petitioners are not entitled to any right in the suit property.

Advocate Commissioner inspected the suit property and submitted his report. It is not correct to state that the petitioners are not aware of the suit proceedings. On the other hand, on 05.04.1999 through advocate Mr.S.K.Periasamy, petitioners have requested their share of 1/44 to be allotted next to the share of Palanisamy/first respondent herein. Only to prevent the respondents 2, 5 and 8 to get their shares, the present application is filed by the petitioners.

6. Before the learned Judge, petitioners examined one Muruganantham as P.W.1 and marked five documents as Exs.P1 to P5. The respondents examined second respondent as R.W.1 and marked one document as Ex.R1.

7. The learned Judge considering the averments made in the affidavit, counter affidavit and also considering the facts and law, held that the petitioners are entitled to their shares only as per Hindu Succession Act, which was in force on the date of death of Palani Gounder i.e., on 25.11.1988 and dismissed the application.

8. Against the said order of dismissal dated 13.06.2014 made in I.A.No.900 of 2001, the present Civil Revision Petition is filed by

the petitioners.

9. The point for consideration is whether the parties are entitled to the shares as per Section 8 of the Hindu Succession Act, as on 25.11.1988, when Palani Gounder died or the petitioners are entitled to shares as per Section 6 of the amended Act, 1 of 1990.

10. The claim of the petitioners is that as per Section 6 of the amended Act 1 of 1990, they are entitled to share. The said contention is contrary to law. As per amended Act, only when the father was alive, the daughters become co-parceners. The amendment Act came into force with effect from 25.03.1989. Petitioners' father Palani Gounder died on 25.11.1988. He had three sons namely, respondents 1 and 2 born through first wife and another son namely, Subramani, born through second wife, who was predeceased. In view of Section 8 of Hindu Succession Act, before amendment, the respondents 1 and 2 are entitled to 1/4th share in the suit property as sons of Palani Gounder. The plaintiff is entitled to 1/4th share as the mother of the predeceased son. Palani Gounder had only 1/4th share and notional partition has come into force on the date of death of Palani Gounder i.e., on 25.11.1988. The petitioner and other legal heirs are entitled to equal shares in 1/4th

share of Palani Gounder in view of the death of Palani Gounder on 25.11.1988 and notional partition. The petitioners are entitled to only a share in 1/4th share of Palani Gounder and they are not entitled to share as per amended Act 1 of 1990, which came into force with effect from 25.03.1989.

11. The learned Judge has considered all the aspects in proper perspective and dismissed the application by giving cogent and valid reason. There is no irregularity or illegality warranting interference by this Court with the order of the learned Judge dated 13.06.2014.

12. In the result, the Civil Revision Petition is dismissed. No costs.

27.11.2017

Index : Yes/No

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To

The Subordinate Judge,
Pollachi, Coimbatore District.

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V.M.VELUMANI, J.

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