

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P.No. 827 of 2021 and
C.M.P.No.6888 of 2021

1.S. Indira Gandhi
2.S. Dharmaraj

... Petitioners

Vs.

S.Mohana Lakshmi

... Respondent

Prayer:

Civil Revision Petition is filed under Article 227 of the Civil Procedure Code, to set aside the order dated 22.01.2021 passed in I.A.No. 10 of 2020 in O.S.No.114 of 2019 pending on the file of Special Subordinate Judge, Special Court for LAOP Cases, Arakonam, Vellore District.

For Petitioners : Mr.T.S. Baskaran

For Respondent : No Appearance

ORDER

The revision petitioners herein are the 2nd and 3rd defendants and the respondent is the plaintiff in O.S.No.114 of 2019.

2. The suit in O.S.No.114 of 2019 had been filed by the plaintiff Mrs.S.Mohana Lakshmi before the learned Special Subordinate Judge, Arakkonam, Vellore District, against three defendants namely (i) Anjalakshmi, (ii) S.Indira Gandhi and (iii) S.Dharmaraj, seeking the relief of partition and separate possession of the properties mentioned in the schedule to the plaint by dividing into four equal shares and to put the plaintiff in separate possession of one such share.

3. Written statement had been filed by the present defendants.

4. During the pendency of the suit, the first defendant Mrs.Anjalakshmi, unfortunately died. The scope of the suit was widened due to controversy which already existed between the plaintiff and the defendants.

5. The plaintiff then filed I.A.No.10 of 2020 under Order 6 Rule 17 and Section 151 of CPC., to amend the plaint, the order passed in which is the subject matter of the revision petition. The said I.A. was filed by the plaintiff to point the death of the 1st defendant in the cause title and to also substitute 1/4th share to 1/3rd share, since it is claimed the plaintiff's share had increased from 1/4th share to 1/3rd share. Such claim for increased share to be substituted was resisted by the revision petitioners.

6. However, an order came to be passed by the learned Special Judge in I.A.No.10 of 2020 on 22.01.2021. The learned Special Judge, after extracting the averments in the petition and the counter, stated that the suit had been filed for the relief of partition of properties into four equal shares and to allot and put the plaintiff in separate possession of one such share. The stand of the defendants, particularly, the revision petitioners herein will have to be decided only on completion of the trial.

7. It had also been stated that no prejudice would be caused to the present petitioners, if the amendment petition is allowed. An opportunity was also granted to file additional written statement.

8. The ground taken by Mr.T.S.Baskaran, learned counsel for the petitioner is that the respondent had wrongly sought such an amendment. The learned counsel for the petitioner submits that as per Section 15 of the Hindu Succession Act, the property of a female Hindu dying intestate shall devolve according to the stipulation set out therein.

9. The learned counsel therefore, stated that the claim of the plaintiff that she is entitled to 1/3rd share cannot be accepted even on legal grounds.

10. However, as regards 'B' schedule lands, as pointed out by the learned counsel, even the learned Special Judge had stated that these issues will have to be decided only on completion of the trial and on analysis of the evidence, which had already been recorded.

11. Merely because the plaintiff has been granted the amendment including her share 1/3rd would not automatically mean that the said share would devolve upon the plaintiff. The learned Special Judge, Arakkonam will have to decide that issue based on the averments in the plaint. Only on completion of trial, can the respective shares of the plaintiff and the second and third defendants be determined and more particularly on the demise of the first defendant. The revision petitioners had also been granted an opportunity to file additional written statement. Specific issues will have to be framed with respect to the share of the plaintiff on the death of the first defendant and whether the plaintiff

is entitled to such increase or decrease based upon Section 15 of the Hindu Succession Act.

12. Additional written statement will have to be filed, for which an opportunity had been granted to the present petitioners. Issues will have to be framed in the suit.

13. With the above observations, protecting the interest of the 1st and 3rd defendants, the Civil Revision Petition is disposed of. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

msm

To

The Special Subordinate Judge,
Special Court for LAOP Cases,
Arakonam, Vellore District.

+1cc to Mr.T.S. Baskaran, Advocate SR.No.22722

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LN (CO)
GMY (02/07/2021)

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