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C.R.P. PD No.3822 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2021

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.PD No.3822 of 2019

and

C.M.P.No. 25125 of 2019

1. Dashna @ Dashnamoorthy,
S/o. Kanakaraj

2. Irisammal,
D/o. Kanagaraj

3. Sudha,
D/o. Kanagaraj

4. Rajamani,
S/o. Kanagaraj

5. Shivan,
S/o. Kanagaraj

... Petitioners

Versus

1. Vasantha,
W/o. Late Irisappan @ Kasinathan

2. Velumani,
S/o. Late Irisappan @ Kasinathan

3. Selvi,
D/o. Sarangapani

4. A.Vasantha,
D/o. Sarangapani

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5. T.Ambiga,
D/o. Sarangapani

6. Indhirani,
D/o. Sarangapani

... Respondents

PRAYER : Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the Order and Decreetal order passed by the learned Family Court Judge, Pondicherry in I.A.No.717 of 2018 in O.S.No.19 of 2012 dated 07.01.2019.

For Petitioners : Mr.V.Sivalingam

For Respondents : Mr. Usha Ramman

ORDER

(This case has been heard through video conference)

This Civil Revision Petition has been filed seeking to set aside the Order and Decreetal Order dated 07.01.2019 passed in I.A.No.717 of 2018 in O.S.No.19 of 2012 dismissing Revision Petitioners' application filed under Order VII Rule 11 (d) of C.P.C. seeking to reject the plaint.

2. Heard both sides.

3. The Revision Petitioners are the defendants 3, 8 to 11 in O.S.No.19 of 2012, which was filed by the plaintiffs on the file of Family Court at Pondicherry for the relief of declaration, for maintenance, for mandatory



injunction, to declare the sale deed as null and void and also for partition of the property by means profits etc. The said suit was originally filed against the 1st plaintiff's father-in-law Sarangapani. During the pendency of the suit, he died and his legal heirs were impleaded as defendants 3 to 11.

4. The Revision Petitioners/defendants filed an application in I.A.No.717 of 2018 to reject the plaint under Order 7 Rule 11(3) of C.P.C. contending that the dispute is involving civil right and that could be decided only by the competent civil forum and not by the Family Court. Further, they have also relied upon Section 7 of Family Court Act contending that the Family Court has no jurisdiction to decide the issue in the instant case, because the plaintiffs are claiming right over the property as the wife of late Irisappan @ Kasinathan, who is brother of contesting defendant. But, to invoke Section 7 of Family Court Act, the relief should be between the spouses and not between co-sharers. Hence, they have denied the jurisdiction of Family Court to decide the issue involved in the suit. The said application was contested by the plaintiffs. On hearing both sides, the Family Court dismissed the petition concluding that the issues involved in



the suit are to be tried before the Family Court. Aggrieved that order, the Revision Petitioners/defendants have filed this Civil Revision Petition.

5. At the time of argument, learned counsel appearing for petitioner would submit that as per Sec. 7 (b) of Family Court Act, the suit or proceeding between the parties to the marriage alone to be decided and not other than the spouses. Sec.7 (b) of the said Act reads as follows :-

*"(b) a suit or proceeding for a declaration as to the validity of the marriage or as to the matrimonial status of any person;
(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them; "*

Considering the said provisions in its entirety, it reveals that if the civil suit arose between spouses, it can be dealt with by the Family Court, but the case in hand reveals that the parties are not spouse and plaintiffs are claiming right over husband's property, which was contested by the brother of her husband. Furthermore, the legal status of plaintiffs also not accepted



by these defendants. So, facts of the case clearly reveals that it is a dispute between co-sharers with respect to the suit property and not between spouses.

6. Per contra, the learned counsel appearing for revision petitioners would submit that at the earlier occasion also, these defendants raised objections, while they filed a suit in O.S.No. 4 of 1997, in which they have filed an application in I.A.No.6 of 2000, wherein they have also disputed the jurisdiction of the court, but the same was not accepted by the trial court. Against which, they have preferred civil revision petition in C.R.P.No. 1105 of 2001, which was also dismissed confirming the trial court order. Hence, the Revision Petitioner has no locus standi again to raise the said petition in the suit and also pointed out that earlier suit was withdrawn and the present suit was filed with comprehensive relief including maintenance, which could be very well dealt by the Family Court.

7. It is true that the Family Court is bound to decide the issue with regard to maintenance, but on seeing the prayer of the plaint, the plaintiffs



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sought the relief of declaration with regard to execution of sale deed and they have to declare their legal status for partition apart from the relief of maintenance. Since the issue involved in the suit are comprehensive in nature, rights and liabilities of parties is to be decided by the civil forum, rather than the Family Court. Hence, the order passed by the Trial Judge is set aside. But, on seeing the record from the year 1997 onwards, the 1st plaintiff and her minor children approached the court for maintenance and other reliefs, but all these years, they were dragged to pillar to post and not able to get any benefits from the court of law. As per the plaint averment, the 1st plaintiff now become paralysed and she is in deathbed. Considering the thorough affairs of the suit, this court is inclined to transfer the suit in O.S.No.19 of 2012 pending before the Family Court, Pondicherry to Principal Sub-Court, Pondicherry. Since the suit is posted for trial, learned Principal Sub-Judge is directed to dispose the case within a period of four months from the date of receipt of copy of this order and the Family Court is directed to send entire records to the Principal Sub-Court, Pondicherry within a period of two weeks from the date of receipt of copy of this order and the parties are directed to co-operate with the speedy trial without



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taking unnecessary adjournments. Accordingly, this Civil Revision Petition is disposed of. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

29.10.2021

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To

Family Court Judge,
Pondicherry.



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T.V.THAMILSELVI, J.

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