



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.02.2021

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (MD) No.105 of 2021

and

CMP(MD) .No.672 of 2021

WEB COPY

Usharani ... Petitioner/Petitioner/3rd Defendant

-Vs-

1. Jayalakshmi ...1st Respondent/Respondent/1st Plaintiff

2. Pandi ...2nd Respondent/Respondent/2nd Plaintiff

3. M.Praba Devi ...3rd Respondent/Respondent/1st Defendant

4. R.Muniyandi andi@
Chandran ...4th Respondent/Respondent/2nd Defendant

5. Sivasami Pillai (died) ... Respondent No.5/4th Defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Fair and Decreetal Order made in I.A.No.49 of 2017 in O.S.No.1 of 2016 dated 18.02.2020, on the file of the Principal District Court, Sivagangai and allow the I.A.

For Petitioner : Mr.S.P.Sudalaiyandi

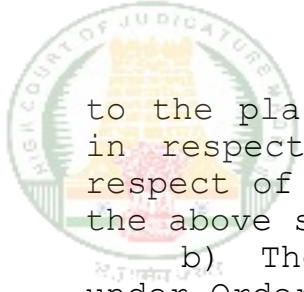
O R D E R

This Civil Revision Petition has been filed to set aside the Fair and Decreetal Order made in I.A.No.49 of 2017 in O.S.No.1 of 2016 dated 18.02.2020, on the file of the Principal District Court, Sivagangai.

2. The revision petitioner is the 3rd defendant, respondents 3, 4 and 5 are the 1st, 2nd and 4th defendants and the respondents 1 and 2 are the plaintiffs in the suit in O.S.No.1 of 2016.

3. Brief facts of this case are that the suit for partition in O.S.No.1 of 2016 has been filed by the respondents 1 and 2 herein against the 3rd, 4th, 5th respondents and the revision petitioner. Pending suit, a petition under Order 7 Rule 11 has been filed by the revision petitioner/3rd defendant seeking rejection of plaint.

a) The contention of the plaintiffs is that the suit properties belonged to one Rajalakshmi Ammal namely mother of the 1st plaintiff. She had executed a WILL dated 15.11.1993 during her life time and after her death on 15.02.1999, the WILL came into force. According



to the plaintiffs, as per the WILL they are entitled for 1/3 share in respect of item No.1 of the suit property and 1/2 share in respect of item Nos.2,3,4 of the suit properties. Claiming the same, the above suit has been filed.

b) The revision petitioner/3rd defendant filed the petition under Order 7 Rule 11 contending that it was the 4th defendant namely Sivasami Pillai, namely the father, who purchased the suit properties in the year 1970,1980,1993 in the name of his wife Rajalakshmi Ammal out of his own funds. According to the revision petitioner, settlement deed was executed by Sivasami Pillai in favour of her and her children besides executing a WILL in favour of her children.

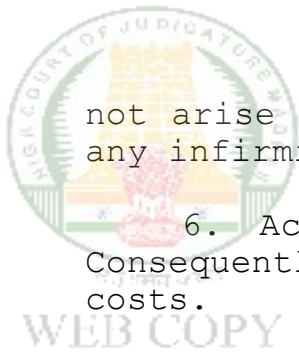
c) It is the further contention of the revision petitioner that the Rajalakshmi Ammal died on 15.02.1999 and the suit has been filed after the expiry of 12 years and therefore, the suit is barred by limitation and also though the 4th defendant died on 28.12.2015, steps have not been taken to amend the plaint.

d) On perusal of the counter affidavit filed by the respondents/plaintiffs, they have specifically denied the purchasing of the property in the year 1970,1980 and 1993 by Sivasami Pillai stating that the said Sivasami Pillai has no right or interest over the property and by virtue of the settlement deeds Rajalakshmi Ammal become the absolute owner of the properties. It was also stated that the Sivasami Pillai maintaining the properties of the other legal heirs and he was paying their due shares to the legal heirs of the Rajalakshmi Ammal. The plaintiffs also denied the execution of the settlement deed of the Sivasami Pillai in favour of the revision petitioner/3rd defendant, since, he was not the owner of the property.

e) It is also submitted that the 5th respondent/4th defendant was alive at the time of filing of the above said suit and after his death, the suit was suitably amended and plaint was also filed accordingly. It was the specific contention of the plaintiffs in the counter affidavit stating that the properties are commonly enjoyed by the legal heirs of the Rajalakshmi Ammal and they were getting their respective share and the suit properties are only maintained by the Sivasami Pillai.

4. Heard the learned Counsel for the revision petitioner and perused the materials placed before this Court.

5. A perusal of the order of the Court below shows that the learned Judge recorded a finding that the issue as to whether the suit properties are belong to Sivasami Pillai or Rajalakshmi Ammal and whether they had right to execute the settlement deeds and WILL as claimed by the parties can be decided only at the time of trial proceedings. Further only upon the death of the owner of the property is succession opens and his or her legal heirs can claim in right share in the suit properties. Even after such succession till such time, the co-owner is denied partition or excluded from



not arise is well founded by the learned Judge which I do not find any infirmity to interfere with the order of the lower Court.

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

Sd/-

Assistant Registrar (P&A)

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/ /2021

Sub Assistant Registrar(CS)

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To

1. The Principal District Court,
Sivagangai.

2.The Section Officer, (2C)
VR Section,
Madurai Bench of Madras High Court, Madurai.

C.R.P. (MD) No.105 of 2021
01.02.2021

SMV (CO)

KB (24.02.2021) 3P 4C