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CRP No.3314 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2022

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.3314 of 2013

Bagyammal (Died)

- 1.Kumarasamy
- 2.Thenmozhi
- 3.Malarkodi
- 4.Palanivel

..Petitioners

Vs.

- 1.Nayagammal
- 2.Velumani @ Palaniammal
- 3.Periyasamy @ Palanisamy
- 4.Chinnappan @ Velusamy
- 5.Sadayappan @ Malaiyappan

..Respondents

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order dated 06.06.2013 in I.A.No.2086 of 2004 in I.A.No.1467 of 1998 in O.S.No.93 of 1987, on the file of the District Munsif, Udumalpet.

For Petitioners : Mr.D.Ravichander

For Respondents

For R1 & 2 : Mr.T.M.Hariharan

For R3 : Died (steps due)

For R4 : Mr.M.N.Balakrishnan

For R5 : No appearance



ORDER

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This Civil Revision Petition is filed to set aside the fair and decreetal order dated 06.06.2013 in I.A.No.2086 of 2004 in I.A.No.1467 of 1998 in O.S.No.93 of 1987, on the file of the District Munsif, Udumalpet.

2. The petitioners are third parties in the suit filed by the respondents 1 and 2 for partition as against the respondents 3 to 5. The respondents 1 and 2 filed a suit for partition in O.S.No.93 of 1987 and the said suit was decreed in their favour and confirmed by this Court in Second Appeal.

3. While pending final decree application, the fifth respondent herein filed an application in I.A.No.1978 of 2001 to add another property in the plaint comprised in Survey No.247/6 ad-measuring to an extent of 5.40 acres. The said petition was also allowed pending final decree application in I.A.No.1467 of 2004. The petitioners filed a petition to implead themselves as party to the final decree proceedings claiming that they are in possession and enjoyment of the property which was subsequently added in the suit for partition and they had also filed suit for declaration in O.S.No.187 of 2004 on the file of the District Munsif, Udumalpet, and the same is also pending. Therefore, the said property cannot be partitioned and it would create further encumbrance over the property.



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4. The learned counsel for the petitioner contended that non-impleadment of the petitioners would lead to multiplicity of proceedings, as the petitioners have made out a case before the Court that they have a right over the property and a suit for declaration is also pending in O.S.No.187 of 2004. He further contended that the preliminary decree was passed and final decree is yet to be passed. Therefore, supplementary fact of the subject cannot be added as one of the property in the partition suit.

5. It is seen that the deceased first petitioner is the wife of the third defendant in the suit namely the fifth respondent herein. In fact, the fifth respondent only filed an application to add the subject property in the partition suit. Therefore, the petitioners have no say in the partition suit. Further, they also filed suit for declaration before this Court for the very same subject property in O.S.No.187 of 2004 which is pending on the file of the District Munsif, Udumalpet. Therefore, the Court below rightly dismissed their application and this Court finds no infirmity or illegality in the judgment passed by the Court below.



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6. Accordingly, the civil revision petition stands dismissed. However, it is made clear that any of the observation made by this Court would not influence the trial Court to dispose the suit filed by them in O.S.No.187 of 2004 on the file of the District Munsif, Udumalpet.

05.12.2022

Speaking/Non-speaking order

Index : Yes/No

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To

The District Munsif,
Udumalpet.



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