



C.R.P. No. 4065 of 2016

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

**C.R.P.No. 4065 of 2016
and
C.M.P. No. 20507 of 2016**

Jayakumar (died)

21. Rajarajeswari,
W/o. Late Jayakumar

3. Minor Jayalakshmi

4. Minor Rajalakshmi

P-3 and P-4 are represented by their
mother and natural guardian Rajarajeswari

(P2 to P4 brought on record as LRs
of deceased P-1 viz., Jayakumar
vide court order dated 01.12.2022
made in C.M.P. No. 20029 of 2021
in C.R.P. No. 4065 of 2016)

(P-3 & P-4 minors represented by their mother
and natural guardian Rajarajeswari vide court
order dated 01.12.2022 made in C.M.P. No.20031
of 2021 in C.R.P. No. 4065 of 2016)

... Petitioners



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Versus

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- 1 Indirani
W/o. Chakravarthi
- 2 Prakash,
S/o.Chakravarthi
- 3 Gopal @ Gopalakrishnan,
S/o.Chakravarthi
- 4 Chitra,
W/o.Ramamurthy
- 5 Venkatraman,
S/o.Manickam
- 6 Selvam
S/o.Ganesan

... Respondents

PRAYER : Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside for the fair and decretal order passed in IA.No.227 of 2016 in OS.no.73 of 2012 dated 04/11/2016 on the file of the court of Addl. Subordinate Judge, Mayiladuthurai.

For Petitioners : Mr.A.Muthukumar

For Respondents : Mr.B.Jawahar for R1

R2 to R6 – exparte



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ORDER

Challenging the impugned order dated 04.11.2016 passed in I.A.No. 227 of 2016 on the file of learned Addl. Sub-Judge, Mayiladuthurai, the 1st defendant preferred this Civil Revision Petition.

2. Originally, a suit in O.S.No. 73 of 2012 was filed by the 1st respondent/plaintiff herein viz., Indirani, mother of Jayakumar, 1st defendant herein for the relief of partition of 1/6th share in the suit property. The other defendants are another daughter and son of plaintiff's mother. The contention of plaintiff is that the suit property is a joint family property, in which, she is claiming her share. The 1st defendant filed written statement before the trial court denying the claim of joint family property. He would contend that as his father addicted to alcohol, he separated from the family along with his brothers and sister and by doing sole trader business, he earned income, out of which, he purchased the suit property. During the pendency of proceedings, the plaintiff filed the application in I.A.No.227 of



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2016 under Sec.151 of C.P.C. to amend the plaint by including the property said to be a joint family property purchased out of income from the joint family nucleus. The said application was strongly objected by the 1st defendant claiming that the first item of suit property was purchased on 19.05.2014 after filing of the suit and the same is a self-acquired property. Furthermore, the fourth item of property belongs to 1st defendant's in-law Meenakshi by way of lease obtained from A/m. Sakthipureeswarar temple and the said property also not belong to the family and the other property belong to his wife is also included in the petition, as such, is not maintainable and prayed to dismiss the application.

3. On hearing submissions of both sides, the trial court held that though item 1 and 2 is not belong to the family, as per the contention of 1st defendant, the same is to be decided only at the time of trial and not in the initial stage. Furthermore, in a suit for partition, all the properties are necessarily to be included in order to avoid multiplicity of proceedings and the nature of property would also be decided only at the time of trial. Accordingly, to that effect, the trial court allowed the application.



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Challenging the said findings, the 1st defendant preferred this Civil Revision
Petition.

4. During the process of proceedings, the 1st defendant/revision petitioner passed away and based on the Will said to be executed by the Revision Petitioner, his wife and two minor daughters filed petitions to implead them as legal heirs and in the said proceedings, the copy of the Will dated 10.11.2019 also annexed along with legal heir petition. As they claimed legal heir based on the Will at the earliest point of time, this Court directed the trial court to take evidence on due execution and adjudicate the validity of the Will by affording opportunity, but as on date, no such steps was taken by either of the parties.

5. Today, when the matter taken up for hearing, the learned counsel for Revision Petitioners submitted that based on the Will, the proposed parties are wanted to implead themselves as legal heirs in this petition. Admittedly, they are wife and minor daughters of Revision Petitioners. Even otherwise, the Will is subject to proof, as they are the legal heirs of 1st



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defendant. Admittedly, challenging the findings of the trial court in the amendment application, the 1st defendant preferred this Civil Revision Petition. Based on a Will, the 1st defendant's wife and his daughters are claiming right over the property. If the Will is decided even at the time of amendment application, the findings would lead to multiplicity of proceedings. As per the contention of plaintiff, it is a joint family property, but the contention of 1st defendant is that during his life time, he purchased property, thereby it is his absolute property. So, the same is to be proved whether it is joint family property or it is a self-acquired property, however, in a suit for partition, all the properties are to be included, if not, the parties concerned would be put to much hardship. Hence, this Court is inclined to allow the petitions and confirming the findings of trial judge. The legal heirs of 1st defendant are given liberty to implead themselves in the trial court proceedings as legal heirs of 1st defendant.

6. In the result, this Civil Revision Petition is dismissed and the order passed by the trial court in I.A.No. 227 of 2016 is confirmed. However, the legal heirs of 1st defendant is directed to prove the execution of Will during the trial proceedings and the trial court is directed to decide the validity of



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the Will while deciding other issues and to dispose the suit within a period of six months from the date of receipt of copy of this order. No costs.

Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To

Addl. Sub-Judge,
Mayiladuthurai.



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T.V.THAMILSELVI, J.

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