



C.R.P.(PD)No.3194 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

C.R.P(PD)No.3194 of 2022

and

C.M.P.No.17009 of 2022

1.N.R.Thiruvengadam

2.N.T.Ramamurthy

... Petitioners

Vs.

N.G.Abijith

... Respondent

PRAYER: The Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the impugned order and decretal order dated 06.08.2022 made in I.A.No.1 of 2021 in O.S.No.18 of 2019 on the file of III Additional District Judge and Sessions Judge, Erode at Gobichettipalayam and reject the plaint in O.S.No.18 of 2019.

For Petitioners : Mr.B.Satish Sundar

ORDER

The defendants 1 and 2 in a Suit for partition filed the present revision petition aggrieved by the order of dismissal of their petition for rejection of plaint, have come up by way of revision.



C.R.P.(PD)No.3194 of 2022

2.The respondent herein who happens to be the grand son of the first petitioner and nephew of the second petitioner, filed a Suit for partition claiming that the Suit item No.1 as ancestral property.

3.The revision petitioners, who are arrayed as defendants 1 and 2, filed a petition to reject the plaint in I.A.No.1 of 2021. In the affidavit filed in support of the petition for rejection of the plaint, it was averred by the revision petitioners that the Suit item No.1 was allotted to the share of the first petitioner and the father of the respondent in a registered partition deed on 27.03.1974 (plaint document 4) and it lost its character of joint family property. The learned counsel further submitted that as far as the Item No.2 is concerned, it was bequeathed to the first petitioner by his father Ramasamy and therefore, treated as separate property.

4.The character of the property cannot be decided at the stage of considering the petition to reject the plaint. As per averment that the Suit first item was allotted to the share of the first petitioner and the respondent/plaintiff's father and therefore, the respondent acquires an interest in the said property by birth. Whether the property lost its character



C.R.P.(PD)No.3194 of 2022

by virtue of partition or remains as a joint family property is a question to be decided at the time of trial. At the time of considering the petition for rejection of the plaint, this Court cannot go into the question as to character of suit property.

5.The reading of the averments found in the plaint and the plaint documents would suggest that the respondent claims right over the suit property. The respondent claims partition mainly on the ground that the suit property is an ancestral property. As I pointed out earlier while considering the petition for rejection of plaint, the Court cannot conduct roving enquiry into the question whether the suit property is an ancestral property or not. Hence I find no merit in the Civil Revision Petition and consequently, the same is dismissed. The connected Civil Miscellaneous Petition is also dismissed. No costs.

6.The learned counsel for the petitioner made a request for early disposal of the suit. The suit is of the year 2019 and the age of the first petitioner even at the time of presentation of the suit was 87 years.



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C.R.P.(PD)No.3194 of 2022

S.SOUNTHAR,J.

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7.Considering the said fact, this Court is inclined to direct the trial Court to dispose of the suit within a period of six (6) months from the date of receipt of a copy of this order.

10.10.2022

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Index : Yes/No
Internet : Yes / No
Speaking /Non Speaking

To

The III Additional District Judge and Sessions Judge, Erode,
Gobichettypalayam

C.R.P(PD)No.3194 of 2022