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C.R.P.No.3155 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.3155 of 2022
and
C.M.P.No.16872 of 2022

1.M.R.Ramasamy

2.P.Hamsaveni @ Hamsa

3.Sakthi Kaaviya

... Petitioners

VS

1.Karthika

2.Minor Swarnika, rep. by her Mother,
the 1st respondent herein

... Respondents

Prayer: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, 1908, praying to allow the revision petition setting aside the order dated 10.06.2022 passed in I.A.No.4 of 2019 in O.S.No.666 of 2019 on the file of the learned V Additional District and Session Judge at Coimbatore, Coimbatore District and reject the plaint in O.S.No.666 of 2019 before the said Court.



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For Petitioners : Mr.V.Rajendran

For Respondents : Mr.V.Viswanathan

ORDER

Aggrieved by an order dismissing the petition to reject the plaint, the petitioners/defendants 1 to 3 have come up with this civil revision petition.

2. The respondents herein filed a suit for partition of their 1/3rd share in the suit property in O.S.No.666 of 2019 on the file of the learned V Additional District and Session Judge at Coimbatore, Coimbatore District. The 1st respondent/1st plaintiff, is widowed daughter-in-law of the 1st petitioner. The 2nd respondent is a minor grand daughter of the 1st petitioner. The 2nd and 3rd petitioners are wife and daughter of the 1st petitioner. The suit for partition was filed by the widow and minor daughter of pre-deceased son of the 1st petitioner viz., R.Gopinath. The brother and sister of 1st petitioner were arrayed as 4th and 5th defendants in the suit. The respondents in their plaint averments had stated that father of the 1st petitioner viz., Rangasamy Gounder was an agriculturist having ancestral joint family properties and the suit Item No.3 was purchased



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by the joint family nucleus. It was also stated that suit Item Nos.1 and 2 were purchased in the name of the 2nd petitioner out of income from joint family nucleus and on these pleadings, they sought for partition of their share in suit Item Nos.1 to 3.

3. The revision petitioners have filed a petition to reject the plaint in I.A.No.4 of 2019 on the ground that as per the Plaint Document No.1 dated 29.12.1948, the suit Item No.3 was purchased in the name father of the 1st petitioner viz., Rangasamy Gounder and the same was his individual property. After death of Rangasamy Gounder on 31.05.2001, the said property devolved on his heirs viz., the 1st petitioner and his siblings as per Section 8 of the Hindu Succession Act, 1956 and therefore, 3rd item is not available for partition.

4. It was also submitted that the suit Item Nos.1 and 2 were purchased by the 2nd petitioner out of her self earnings and the averment in the plaint that Item Nos.1 and 2 were purchased with the aid of contribution from the joint family nucleus was denied. Therefore, in nutshell, it is the case of the petitioners that all the three items of suit properties cannot be treated as joint



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family properties and hence, the respondents/plaintiffs have no right to claim partition.

5. The Court below dismissed the application filed by the revision petitioners for rejection of the plaint on the ground that whether the suit properties are ancestral properties or self acquired properties can be gone into only at the time of full fledged trial. Aggrieved by the same, the petitioners/defendants 1 to 3 have come up by way of this revision.

6. The learned counsel for the revision petitioners submitted that a mere look at the plaint documents would suggest that the suit Item No.3 is the self acquired property of Rangasamy Gounder, father of the 1st petitioner and the suit Item Nos.1 and 2 are the self acquired properties of 2nd petitioner. Therefore, the plaint does not disclose any cause of action for claiming partition. The learned counsel also relied on the following decisions of the Apex Court for the proposition that after coming into force of Hindu Succession Act, 1956, if a male Hindu dies leaving a Class I female heir, his interest in the coparcenary property would devolve by testamentary or intestate



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succession and not by survivorship.

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- (i) ***(2016) 4 SCC 68 (Uttam vs Saubhag Singh)***
- (ii) ***2020 (1) MWN (Civil) 528 (Govindan vs. Revathi)***
- (iii) ***2014 (1) CTC 73 (Arunagiri vs. Ayyar Muthuraja)***

7. The close reading of the plaint averments would suggest that the respondents/plaintiffs had specifically pleaded that the Grand Father of the deceased R.Gopinath under whom they claim title viz., Rangasamy Gounder had ancestral properties and suit Item No.3 was purchased from out of joint family nucleus. It was also specifically averred that the suit Item Nos.1 and 2 which stands in the name of 2nd petitioner was also purchased out of joint family nucleus for the benefit of joint family in the name of 2nd petitioner. The certified copy of sale deed relating to suit Item No.3 which stands in the name of Grand Father of deceased R.Gopinath viz., Rangasamy Gounder was filed as Plaint Document No.1. The certified copies of title documents relating to Item Nos.1 and 2 which stands in the name of 2nd petitioner were produced as Plaint Document Nos.2 and 3. Whether there was a sufficient joint family



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nucleus and whether suit Item No.3 was purchased out of surplus income from joint family nucleus and whether suit Item Nos.1 and 2 were purchased in the name of 2nd petitioner out of joint family income for the benefit of joint family, all these questions are can be decided only based on the evidence to be let in by the parties in a full fledged trial.

8. It is settled law that at the time of rejection of the plaint, Court is only concerned with the averments found in the plaint and it cannot look into defence raised by the defendants. The averments found in the plaint in the present case discloses a cause of action for maintaining the suit for partition. The learned counsel for the revision petitioners vehemently contended that the averments found in the plaint gets falsified by the Plaint Document Nos.1 to 3. Though the suit Item No.3 stands in the name of deceased Rangasamy Gounder and suit Item Nos.1 and 2 stands in the name of 2nd petitioner as per the Plaint Document Nos.1 to 3, whether those properties were purchased out of joint family nucleus and whether those properties were treated as joint family properties etc., can be decided only in a full fledged trial and therefore, I do not find any reason to interfere with the order passed by the Court below



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dismissing the petition to reject the plaint.

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9. The learned counsel for the revision petitioners submitted that when admittedly suit Item No.3 belongs to Rangasamy Gounder, who died on 31.05.2001, his interest in the Hindu coparcenary property will not devolve by survivorship but it would devolve by intestate succession as per Section 8 of Hindu Succession Act, 1956. There is no quarrel with regard to the said legal proposition. But however, as per the plaint averment deceased Rangasamy Gounder had ancestral properties and out of income from ancestral property suit Item No.3 was purchased in his name.

10. In that case, the deceased husband of the 1st respondent and father of the 2nd respondent viz., R.Gopinath would have acquired interest in the ancestral properties by birth and on his death his interest in the suit properties would devolve upon respondents 1 and 2 under Section 8 of the Hindu Succession Act, 1956. Though interest of Rangasamy Gounder in the coparcenary property would devolve upon his class I heirs under Section 8 of the Hindu Succession Act, 1956, the interest of the deceased R.Gopinath,



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which he got by virtue of his birth in the family would devolve upon respondents 1 and 2. The character of the suit properties whether it is ancestral or self acquired cannot be gone into at the time of considering the petition for rejection of the plaint, in the light of the clear averments made in the plaint as mentioned above. Therefore, I do not find any reason to interfere with the well considered order passed by the Court below.

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

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Index : Yes / No
Speaking Order : Yes / No

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To

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1. The V Additional District and Session Judge at Coimbatore,
Coimbatore District.



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S.SOUNTHAR, J.

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S.SOUNTHAR, J.

After pronouncing the order, the learned counsel for the petitioners made a request to this Court to give a direction to the Court below to dispose of the Original Suit within a time frame. The suit is of the year 2019. The relief sought for in the suit is partition.

2. The learned counsel for the respondents has no objection to issue a direction.

3. Therefore, this Court is inclined to direct the V Additional District and Session Judge at Coimbatore, Coimbatore District, to dispose of the suit in O.S.No.666 of 2019 within a period of six months from the date of receipt of a copy of this order.

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