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CRP.No.1237 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.1237 of 2017
and CMP.No.5855 of 2017

1.Minor Deepa

2.Minor Mohan

(minor petitioners 1 & 2 represented by their mother)

3.Chitra

... Petitioners

Vs.

1.Panaiyan

2.Mannu alias Ramasamy

3.Govindammal

4.Govindasamy

5.Panjali

... Respondents

PRAYER: Civil Revision petition is filed under Article 227 of the Constitution of India praying to set aside the order in unnumbered OS.No. of 2016 on the file of the learned Principal Subordinate Judge, Krishnagiri dated 15.09.2016 and to direct the lower court to number the suit.

For Petitioners : Mr.M.John Kennady

For Respondents

For R1 & 2 : Mr.D.Maharajan

For R3 : Mr.V.Nicholas

For R4 : Mr.G.Govindasamy
for Mr.Dalit Tiger C.Ponnusamy

For R5 : Mr.B.Gnana Vinothan



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ORDER

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This civil revision petition is filed as against the order passed in unnumbered OS.No. of 2016 on the file of the learned Principal Subordinate Judge, Krishnagiri dated 15.09.2016, thereby rejected the suit for the reason that the suit is barred by *res judicata*.

2. Heard, Mr.M.John Kennady, the learned counsel for the petitioners, Mr.D.Maharajan, the learned counsel for respondents 1 & 2, Mr.V.Nicholas, the learned counsel for the third respondent, Mr.G.Govindasamy, the learned counsel for the fourth respondent and Mr.Gnana Vinothan, the learned counsel for the fifth respondent.

3. It is seen from the records that the present suit is filed for partition claiming 2/5 share in respect of the subject property. The third plaintiff i.e. the mother for the plaintiffs 1 and 2 is claiming to be the second wife of the second respondent herein. Already suit for partition was filed by defendants 2 to 5 in OS.No.84 of 2005 for partition in which already preliminary decree was passed on 21.01.2009. On perusal of the said judgment and decree revealed that the sister of the second defendant is claiming 1/2 share against the second defendant and one Mr.Govindasamy. The said Govindasamy was set *exparte*.



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The said suit was contested by the second respondent and the present suit is also filed as against the very same property which was allotted to the parties.

Therefore, the present suit is clearly barred by principle of *res judicata* and the court below rightly rejected the same. Therefore, this Court finds no infirmity or illegality in the order passed by the court below.

4. Accordingly, the present civil revision petition is dismissed. However, if at all any claim as against the second defendant, the petitioners are at liberty to file suit as against the second respondent alone in respect of their internal disputes. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

05.12.2022

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order

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G.K.ILANTHIRAIYAN, J.



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To
The learned Principal Subordinate Judge,
Krishnagiri

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