



CRP.No.3289 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.3289 of 2022
and
CMP.No.17478 of 2022

1.Vasantha
2.Thiyagarajan

... Petitioners

Vs.

1.Prema
2.Prabha
3.Brindha
4.Bama
5.Vijaya
6.Divya @ Mohanapriya
7.Arun Balaji
8.Kumaravel

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 15.06.2022 made in I.A.No.34 of 2020 in O.S.No.36 of 2019 on the file



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of the learned Additional District Court, Kallakurichi, by allowing this Civil Revision Petition.

For Petitioner : Mr.N.Manoharan

ORDER

This Civil Revision Petition is filed, challenging the order passed by the Court below dismissing the petition filed by the revision petitioners/defendants 1 & 2 seeking rejection of the plaint filed by the respondents 1 to 5.

2. The respondents 1 to 5/plaintiffs, who are the sisters of the late Selvamani, filed a suit for partition against the petitioners and other respondents on a specific pleading that the suit properties were ancestral properties. The petitioners herein filed a petition for rejection of the plaint on the ground that all the suit properties are not ancestral properties and the suit items 11 to 18 are self acquired properties of father of the petitioners, viz., late Selvamani, purchased out of his self income.



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3. The petitioners also contended that the respondents 1 to 5 were never in joint possession of the suit properties and they falsely claimed in the petition that they were in joint possession of the suit properties and filed a suit for partition.

4. On that averments, the petitioners sought for rejection of the plaint. The Court below on consideration of the materials available on record concluded that the issue raised by the revision petitioners that whether item Nos.11 to 18 of the suit properties are ancestral properties and whether those properties were purchased out of the self earned income of the father of the petitioners have to be decided only at the time of full pledged trial based on the evidence to be let in by both the parties.

5. It is settled law, even in cases where the sharers residing away from the joint family properties, they are deemed to be in joint possession of the suit properties along with other co-owners. The



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possession of one co-owner is seen as possession for himself and also for possession on behalf of other co-owners, who is not in possession.

Therefore, the Court below found that there is no merit on the point raised by the revision petitioners in support of their prayer for rejection of plaint and rightly dismissed the application. I do not find any error in the order passed by the Court below. The points raised by the revision Petitioners that item Nos.11 to 18 are self acquired properties of Selvamani and the respondents 1 to 5 are not in joint possession of the suit properties, etc., are all matters for trial and the same cannot be decided in a petition for rejection of the plaint.

6. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes / No
dna



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To

The III Additional District Court, Kallakurichi.



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S.SOUNTHAR , J.

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