



C.R.P. (PD) No.3567 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 23.06.2022

ORDERS PRONOUNCED ON : .07.2022

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (PD) No.3567 of 2019
and C.M.P.No.23381 of 2019

Mangammal
D/o Arunachalam (Late)

... Petitioner

VS.

1.A.Venkatachalam
S/o Arunachalam (Late)
2.V.Manickam
S/o Venkatachalam
3.Minor Deepa
aged about 15 years
Rep.by her next friend and father – V.Manickam
4.A.Govindan
S/o Arunachalam

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 27.08.2019 in I.A.No.386 of 2019 in O.S.No.778 of 2013 on the file of the II Additional District Munsif Court, Salem.



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For petitioner : Mr.K.Selvaraj

For respondents : Mr.S.Kalyanaraman for R4
for RR1 to 3 – No appearance

ORDER

This Civil Revision Petition has been filed, against the order of dismissal dated 27.08.2019 passed in I.A.No.386 of 2019 in O.S.No.778 of 2013 passed by the II Additional District Munsif Court, Salem.

2.The proposed Defendant, who filed the petition in I.A.No.386 of 2019 under Order 1 Rule 10 and Section 151 of CPC, seeking to implead herself and her brother - Subramaniam as defendants in the suit in O.S.No.778 of 2013 is the Revision Petitioner herein.

3.The Revision Petitioner is the third party to the suit. The 1st plaintiff is the elder brother of the Revision Petitioner. 2nd plaintiff is the son of 1st plaintiff and 3rd plaintiff is the daughter of 2nd plaintiff. Suit in O.S.No.778 of 2013 was filed by the plaintiffs for permanent injunction and costs.

4.Pending suit, the Revision Petitioner/proposed defendant filed an application in I.A.No.386 of 2019 to implead herself and her younger brother –



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Subramaniam as defendants in the suit. Since the said application was dismissed, by the impugned order dated 27.08.2019, the present Civil Revision Petition came to be filed before this Court.

5.The learned counsel appearing for the Revision Petitioner would submit that the properties in S.No.21/4, 21/3, 21/6, 21/11, 22/6, 22/8, 24/6 originally belongs to Arunachalam. He died intestate. After his death, the 1st Plaintiff, Revision Petitioner and her younger brother – Subramaniam are the joint owners of the above mentioned suit property. The 1st plaintiff had executed a sale deed dated 03.03.2006 in respect of his undivided share in the suit property to the 4th respondent/defendant, without the knowledge of the petitioner and her brother - Subramaniam and subsequently the 1st plaintiff has also executed a gift deed dated 09.08.2010 in respect of 2nd and 3rd plaintiffs, in respect of the property comprised in S.No.21/4. The petitioner and her brother Subramaniam are also having undivided equal share in the suit property. The relationship between the revision petitioner and her brother Subramaniam / the proposed defendants and their ownership on the suit property is also admitted by the plaintiffs in the suit. However, the plaintiffs in order to grab the suit property, purposely not impleaded the Revision Petitioner and her younger brother as parties to the suit.

6.The learned counsel appearing for the 4th respondent would submit that



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the entire trial is over in the suit and the plaintiffs have not even pleaded in their
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plaint that the suit property is a joint family property. If at all, the Revision
Petitioner has got any right or share in the property, she must work out the same
through a separate suit for partition and the relief claimed by the plaintiffs in the
present suit is entirely different and if the petitioner is impleaded in this suit, the
entire cause of action and the entire relief will be deviated from the main path.

7. Heard the learned counsel on either side and perused the materials
available on record.

8. Admittedly, the 1st plaintiff in the suit, who is none other than the elder
brother of the Revision Petitioner herein, sold the suit property in favour of the
defendant. The petitioner is residing in the suit property and still continuing her
possession and enjoyment of the suit property. Now, the trial is over and the
case was reserved for judgment. When the suit was reserved for judgment, the
petitioner herein filed an application to implead herself and her younger brother
as defendants to the suit.

10. The learned Trial Judge pointed out that the suit is filed by the
plaintiffs, as against the 4th respondent/defendant, to declare the sale deed dated



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03.03.2006 registered as document No.96/2006 before the Sub Registrar Office, Yercaud, as null and void, since, the cause of action and the relief sought for by the petitioner is entirely different from the present suit and hence rejected the petition for impleadment. If at all, the petitioner has got any right or share in the suit property, she can work out the same by filing a partition suit against the plaintiffs. The learned Judge further held that the presence of the petitioner is not absolutely necessary to decide the issue involved in this suit. It was categorically held that the petitioner and her brother Subramaniam are neither proper parties nor necessary parties in the suit.

11.The findings of the learned Judge is well founded and this Court does not find any necessity to interfere with the order dated 27.08.2019 in I.A.No.386 of 2019 in O.S.No.778 of 2013.

12.Accordingly, this Civil Revision Petition stands dismissed. No Costs. Consequently connected miscellaneous petition is closed.

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.07.2022

J.NISHA BANU, J.



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Index :Yes/No

Internet:Yes/No

Speaking order/Non-speaking order

To

- 1.The II Additional District Munsif, Salem.
- 2.The Section Officer, V.R.Section, High Court of Madras.

PRE-DELIVERY ORDER
MADE IN
C.R.P. (PD) No.3567 of 2019

.07.2022