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C.R.PD.No.871 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20/6/2023

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Civil Revision Petition PD No.871 of 2023

a n d

C.M.P.No.6524 of 2023

Nirmala Devi ... Petitioner

Vs

1. T. Vasanthi

2. T. Pavithra

3. Poonkody ... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India against the fair and decreetal order, dated 24/8/2022 made in I.A.No.5 of 2022 in O.S.No.46 of 2019 on the file of IV Additional District Judge, Erode District at Bhavani.

For Petitioner ... Mr.V.Anandhamoorthy

For respondents ... Mr.T.Dhanasekaran



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ORDER

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This revision is filed aggrieved by the order passed in I.A.No.5 of 2022 in O.S.No.46 of 2019, on the file of learned IV Additional District Judge, Erode District at Bhavani, in so far as direction given by the Court to include the properties mentioned in the counter also, as the schedule of properties.

2. The facts in brief as can be gathered from the records would go to show that the first and second respondents have filed a suit against the petitioner and third respondent seeking partition and separate possession of the suit schedule properties making them into six equal shares and to allot four shares to them. The petitioner has filed I.A.No.5 of 2022 seeking for a direction to include certain portion of the property, stating that one N.A.Ramasamy, during his life time has executed a Will, dated 28/9/2006, bequeathing the petition schedule property in favour of his grand daughters, viz., T.Pavithra and T.Akila. However, the said property is not included in the suit schedule and therefore, sought for inclusion of the suit property.



3. The first respondent in the counter, while opposing the contention of the request of the second defendant to include properties bequeathing in favour of T.Pavithra and T.Akila as a part of schedule properties, has also mentioned that the said N.A.Ramasamy had another property situated at 33, Thindal Village, in S.F.No.212/214/1, 2 to an extent of 1250 Sq.ft in Erode Taluk and the said property is not included in the suit schedule property.

4. The trial Court, has allowed the application, directing the respondents/plaintiffs to include the properties that were bequeathed in favour of T.Pavithra and T.Akila. However, the trial Court has also further directed to include the properties situated in Erode Taluk to an extent of 1250 sq.ft, as mentioned by the first respondent in her counter, which is a cause for consideration of the petitioner herein.

5. The petitioner being aggrieved has filed this Civil Revision Petition.

6. Heard Mr.V.Anandhamoorthy, learned counsel for the petitioner and Mr.T.Dhanasekaran, learned counsel for the respondents.



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7. The petitioner in I.A.No.5 of 2022 did not request for inclusion of the property situated in Erode Taluk, which was mentioned in the counter filed by the respondents. But the trial Court, while allowing I.A.No.5 of 2022, directed the respondents to include the property to an extent of 1250 sq.ft. In order to include the property, in the plaint schedule, the property description required to be given with specific boundaries, extents and other particulars. Further, there was no opportunity to the parties to the suit to express their views, as to whether the counter mentioned property situated in Erode Taluk can be included in the plaint schedule or not. In case, if any of the parties file an application to include the properties situated in Erode Taluk, then other parties to the suit will file their counter and basing on the objections if any, Court can certainly pass appropriate order. But here is a case where simply taking a statement from the counter in I.A.No.55 of 2022 has directed the plaintiffs to include the said property also in the suit schedule which is beyond the scope of petition in I.A.No.5 of 2022.

8. In the result, this Civil Revision Petition is allowed and the orders passed by the trial Judge in I.A.No.5 of 2022 dated 24/8/2022 is set



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aside. Learned IV Additional District Judge, Erode, is directed not to include the property in Erode Taluk, 33 Thindal Village in S.F.No.212, 214/1, 2 in which site No.69 Balaji garden with an extent of 1250 sq.ft., in the suit schedule of property. No costs. Consequently, the connected Miscellaneous Petition is closed.

20/6/2023

Index :yes/no

Neutral Citation: Yes/No

mvs.

To

IV Additional District Judge, Erode District at Bhavani.



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Dr.D.NAGARJUN,J

mvs.

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