



C.R.P.(NPD)No.4229 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD).No.4229 of 2010

and

CMA.No.3093 of 2010

in CRP(NPD).No.4229 of 2010:

Nagarajan

... Petitioner

Vs.

1.Saminatha Pillai
2.Balasubramanian
3.Viswanathan
4.Kasturi
5.Rajakumari
6.Vasanthakumari
7.Prema
8.Kamala
9.Vimala

... Respondents

PRAYER: Civil Revision Petition is filed **under Article 227 of the Constitution of India**, against the fair and final order of the Sub Court, Thiruvarur, dated 31.12.2009 made in I.A.No.26 of 2009 in A.S.No.2/2009.



C.R.P.(NPD)No.4229 of 2010

in CMA.No.3093 of 2010:

Nagarajan

... Petitioner

Vs.

1.Saminatha Pillai
2.Balasubramanian
3.Viswanathan

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed **under Order 43 Rule 1(v) of CPC**, against the Judgment and decree of Sub Court, Thiruvarur, dated 31.12.2009 made in A.S.No.2/2009 remanding the matter after setting-aside the judgment and decree of District Munsif Cum Judicial Magistrate Court, Nannilam dated 31.12.2008 made in O.S.No.79 of 2007.

(in both CRP and CMA)

For Petitioner : Mr.B.Jawahar

For Respondents : Mr.A.Muthukumar

COMMON ORDER

The Civil Revision Petition and the Civil Miscellaneous Appeal are taken up together for disposal.



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2. The Civil Miscellaneous Appeal was clubbed along with the Civil Revision Petition, pursuant to an order passed by the Hon'ble Mr.Justice S.Tamil Vanan on 04.01.2011. This was reiterated by the Hon'ble Mr.Justice P.R.Sivakumar on 13.11.2013 and by the Hon'ble Mr.Justice T.S.Sivagnanam on 23.04.2014. In consequence of the aforesaid orders, the Civil Miscellaneous Appeal and the Civil Revision Petition are listed for disposal.

3. O.S.No.79 of 2007 has been preferred by the Civil Revision Petitioner/appellant in the appeal. The suit is one for partition and separate possession. He claims 1/3rd share on the ground, the property is an ancestral property in the hands of his father Saminatha Pillai. The said Saminatha Pillai is the first defendant in the suit. It was contested by Saminatha Pillai and the suit was decreed as prayed for by the learned District Munsif, Nannilam.



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4. Aggrieved over the said Judgment and Decree, an appeal was preferred in AS.No.2 of 2009 before the learned Subordinate Judge at Thiruvarur.

5. At that stage, an application was filed in I.A.No.26 of 2009 by the daughters of Saminatha Pillai viz., respondents 4 to 9 to this Civil Revision Petition. This application was allowed. As new parties were impleaded to the appeal, the decree passed in O.S.79 of 2007 was set aside and the suit was restored on to the file of District Munsif, Nannilam for fresh disposal in accordance with law.

6. Challenging the impleading application in I.A.No.26 of 2009, this Civil Revision Petition has been preferred. Challenging the order of remand, C.M.A.No.3093 of 2010 has been filed.

7. Heard Mr.B.Jawahar, learned counsel appearing for the petitioner and Mr.A.Muthukumar, learned counsel appearing for the respondent.



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8. If I were to treat the property as an ancestral property by virtue of an amendment made to the Hindu Succession Act, in particular to Section 6, the daughters will get a share. This position has been declared by the Supreme Court in the case of ***Vineetha Sharma Vs. Rakesh Sharma and others*** reported in ***2020 (9) SCC 1***. I were to treat the property as a self acquisition of Saminatha Pillai, the daughters would still be entitled to succeed on account of the fact that the said Saminatha Pillai passed away on 26.09.2013.

9. In a suit for partition, all the sharers must be made as a party to the suit. Even, if one person is not made as a party, that might result in the suit being dismissed for non-impleading of necessary parties. Taking into consideration, the daughters have share in the property, the learned Sub Judge, Thiruvarur, has impleaded them as a party. I do not find any error or irregularity for impleading them as necessary parties. Therefore, the Civil Revision Petition is dismissed.



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10. It is a settled position of law that where a new party is impleaded pending litigation and he is claiming an independent right and not a right through one of the already impleaded parties, then the suit necessarily have to be remanded. This is the verdict of this Court in the case of *A.Peter Vs. Royappan* reported in *MANU/TN/0793/1993 (DB)*. The Bench followed the position of law laid down in *Uzir Alisardar Vs. Savai Pehra* (ILR 43 Cal 938) & *Venkata Radha Krishna Rao Vs. Venkata Rao* (ILR 43 Mad 713). Therefore, the respondents 4 to 9 having been impleaded in I.A.No.26 of 2009 by the Sub Court, Thiruvavarur, the suit necessarily would have to be remanded in order to enable the newly impleaded defendants to file their statement and contest the claim on merits and let in evidence.

11. Mr.B.Jawahar, learned counsel would want me to sustain the finding that the property is a joint family property. Sitting in revision, the scope of my interference is very limited. The entire appeal is not before me as in the case of second appeal for me to return a finding whether the



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property is ancestral or self acquired by late Saminatha Pillai. I have only found that the daughters are proper and necessary parties to the proceedings. Therefore, I have to confirm the order in CRP.No.4229 of 2010. It is for the learned District Munsif, Nannilam to go into the issue whether the property is a joint family property or the self acquisition of Saminatha Pillai and decide on the same. Suffice to state that the impugned orders do not require any interference. Accordingly, both the Civil Miscellaneous Appeal and the Civil Revision Petition are dismissed. No costs.

19.09.2023

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No
vkr/rjr

To

- 1.The Sub Court, Thiruvavarur.
- 2.The District Munsif cum Judicial Magistrate, Nannilam.

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V.LAKSHMINARAYANAN,J.

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