



CRP.No. 331 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2023

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

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and

CMP.No. 2848 of 2021

1. Arumugam

2. Ramesh @ Rameshkumar

... Petitioners

Versus

1. Meenatchi

2. Selvi

3. Sakthi

4. Senthil

5. Sivagami

6. Subbaiyan

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, prays to set aside the fair and decretal order dated 05.02.2020 made in I.A.No.99 of 2020 in O.S.No. 106 of 2017 on the file of Subordinate Judge, Kangayam.

For Petitioners

: Mr.G. Pavendhan

For Respondents

: Mr.K. Govi Ganesan



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ORDER

This Civil Revision Petition has been filed seeking to set aside the fair and decretal order dated 05.02.2020 passed in I.A.No. 99 of 2020 in O.S.No. 106 of 2017 on the file of Subordinate Judge, Kangeyam.

2. The revision petitioners herein are the defendants and the respondents herein are the plaintiffs in the original suit in O.S.No. 106 of 2017.

3. Originally, the suit was filed by the respondents/plaintiffs before the Subordinate Court, Kangayam, for partition, dividing the suit A schedule properties into 12 equal shares and dividing the suit B schedule properties into 8 equal shares and to allot one such share to each one of the plaintiffs and also for permanent injunction restraining the defendants from in any manner creating any documents over A and B schedule properties.



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4. The first defendant has contested the suit by filing written statement and denied all the averments made in the plaint.

5. While the suit is pending, the respondents/plaintiffs filed IA.919 of 2019 in O.S.No.106 of 2017 seeking to implead the 6th plaintiff in the suit and the same was allowed on 13.01.2020. Subsequently, I.A.No.99 of 2020 was filed under Order 6 Rule 17 of the Code of Civil Procedure and the same was allowed by order dated 05.02.2020. Challenging the said order, the present Civil Revision Petition is filed.

6. Heard both sides and perused the materials placed on record.

7. On a perusal of the records, it is seen that during the pendency of the suit, the respondents/plaintiffs filed IA.No.919 of 2019 seeking to implead the 6th plaintiff in the suit and the same was allowed by order dated 13.01.2020. The proposed party Subbaiyan is the uncle of the respondents and specifically, a question was raised in the cross examination of PW1. Even in the written statement, it has been pleaded that the husband of Valliammal, namely, Subbaiyan is a necessary party,



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after her death in 2013. Though the particular aspect was raised in the written statement, only the plaintiffs have belatedly come up with the instant application.

8. It is also seen that the plaintiffs filed I.A.No.99 of 2020 seeking amendment of plaint, in addition to the details of the 6th defendant, who was sought to be impleaded, and additional averment has been surreptitiously introduced stating that the alleged Will stated in the written statement is not true and genuine. The amendment petition I.A.No.99 of 2020 was filed on 05.02.2020 and the same was allowed on the same day. No opportunity was granted to the petitioners/defendants to submit their objection by way of counter statement. It is the further case of the petitioners that PW1 was cross examined in full. At this stage, the sentence that the alleged Will stated in the written statement is not true and genuine, was wrongfully introduced by way of amendment which is apparent and therefore, the issue involved can be decided only at the time of evidence and trial, based upon the Will dated 27.03.1996. Hence, this Court is inclined to remand the matter back to the Court below for fresh consideration. Accordingly, the impugned order is set aside.



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9. Taking into consideration the above facts and circumstances of the case, this Court accepts both sides' arguments, and remand this matter back to the Court below. Both parties are directed to appear and raise all the aspects before the Court below. Further, the Court below is directed to dispose of the suit in O.S.No.106 of 2017 on the file of Subordinate Court, Kangayam, within a period of three months from the date of receipt of a copy of this order, after giving opportunity of hearing to the parties concerned and pass appropriate orders on merits and in accordance with law.

10. With the above observations and directions, this Civil Revision Petition is disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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msm

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No



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- To
1. The Subordinate Judge, Kangayam.
 2. The Section Officer, V.R.Section, High Court, Madras.



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