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C.R.P.Nos.649 and 1493 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.03.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.Nos.649 and 1493 of 2020
C.M.P.No.3350 of 2020

Shanthi ... Petitioner in CRP No.649 of 2020
R.Babu ... Petitioner in CRP No.1493 of 2020

Vs.

1. A.D.Rajagopal Naidu (Died)
2. R.Babu
3. Kanchana
4. Saraswathi
5. Sathiyabama
6. Dhanraj ... Respondents in CRP No.649 of 2020

[Respondents 3 to 6 brought on
record as Lrs of the deceased R1,
viz., A.D.Rajagopal Naidu vide
court order dated 07.12.2022
made in CMP No.21011 of 2022
in CRP No.649 of 2020 by
VBSJ]

1. A.D.Rajagopal Naidu (Died)
2. Shanthi
3. Kanchana
4. Saraswathi
5. Sathiyabama
6. Dhanraj ... Respondents in CRP No.1493 of 2020



C.R.P.Nos.649 and 1493 of 2020

[Respondents 3 to 6 brought on record as Lrs of the deceased R1, viz., A.D.Rajagopal Naidu, vide court order dated 07.12.2022 made in CMP No.14136 of 2021 in CRP No.1493 of 2020 by VBSJ]

Civil Revision Petitions are filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 06.12.2019 in I.A.No.1 of 2019 in O.S.No.1216 of 2019 on the file of the learned XVIII Additional City Civil Court, Chennai respectively

In CRP No.649 of 2020

For Petitioners : Mr.M.Sriram

For Respondents : Mr.K.Venkatesan

In CRP No.1493 of 2020

For Petitioners : Mr.R.Siddharth

For Respondents : Mr.N.V.Prakash

COMMON ORDER

Since the issues involved in both the petitions are one and the same, they are taken up together and a common order is being passed.



C.R.P.Nos.649 and 1493 of 2020

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2. The present Civil Revision Petitions have been filed to set aside the fair and decreetal order dated 06.12.2019 in I.A.No.1 of 2019 in O.S.No.1216 of 2019 on the file of the learned XVIII Additional City Civil Court, Chennai respectively.

3. The brief facts of the case are as follows:-

The petitioner in C.R.P.No.1493 of 2020 is the plaintiff and the petitioner in C.R.P.No.649 of 2020 is the defendant in O.S.No.1216 of 2019. The said suit has been filed for partition by dividing the suit schedule property into two equal shares by metes and bounds and allot one such share to the plaintiff, deliver possession of the same and to appoint an advocate commissioner to effect such division, if necessary and to direct the defendant to pay a sum of Rs.5,76,000/- Pending suit, I.A.No.1 of 2019 was filed by third party, viz., A.D.Rajagopal naidu/1st respondent, who is none other than the father of the plaintiff and defendant in O.S.No.1216 of 2019 to implead himself as 2nd defendant in the suit. A counter has been filed resisting the said claim by the plaintiff. The said petition was allowed stating that in order to decide the issues in dispute pertaining to the present suit, the said third party is a proper and necessary party. As against the



same, the plaintiff and the defendant in O.S.No.1216 of 2019 have come up with the present Revisions. Since the 1st respondent died, the other legal heirs were brought on record as respondents 3 to 6 in both the Revisions.

4. The learned counsels for the petitioners would submit that the trial court failed to consider the Judgment and Decree passed in O.S.No.289 of 2003 by the Subordinate Court, Ranipet at Vellore, which was later, confirmed in A.S.No.7 of 2012 by the Principal District Judge, Vellore, wherein it was clearly held that the 1st respondent herein is not entitled to a share in the present suit property and the same was confirmed by this Court in S.A.No.736 of 2014.

5. The learned counsels for the petitioners also submit that the trial court failed to look into the legal principle enunciated under Order I Rule 10 CPC, where only the necessary or proper parties have to be impleaded in order to enable the court effectively and completely adjudicate upon and settle all the questions involved in the suit and in this case, the 1st respondent is neither the necessary nor a proper party to the suit.



C.R.P.Nos.649 and 1493 of 2020

6. The learned counsel for the petitioners also submitted that the suit property was purchased in the year 1987 and the 1st respondent has not exercised any right over the property for more than 32 years, now, has come forward with false claim ignoring the earlier rejection of his claim, only for the purpose of dragging the suit. That apart, the learned counsel has relied on the Judgment of the Hon'ble Supreme Court reported in (1999) 4 Supreme Court Cases 243 [Pawan Kumar Gupta Vs. Rochiram Nagdeo).

7. Per contra, it is the contention of the learned counsel for the respondents 3 to 6 that the deceased - 1st respondent is the beneficial owner of the suit property and executed the sale deed on 27.12.1987 in favour of his son and daughter, viz., petitioners in these revisions.

8. The learned counsel for the respondents 3 to 6 also contends that the petitioner in CRP No.1493 of 2020 filed the suit in O.S.No.289 of 2003 on the file of the learned Subordinate Judge, Ranipet for partition and 1/3rd share in the properties mentioned therein under the Schedules A, B and C and for permanent injunction restraining 1st respondent from alienating or encumbering the said suit properties, contending that the said properties



C.R.P.Nos.649 and 1493 of 2020

were ancestral properties. The trial court passed a preliminary decree for partition and $1/6^{\text{th}}$ share in the schedule A properties, $1/3^{\text{rd}}$ share in the schedule B properties and $1/3^{\text{rd}}$ share in items 2 to 6 of the Schedule C properties, referred to therein and the properties in respect of the Item No.1 of 'C' schedule properties was dismissed by the trial court. Further, the 1st respondent preferred an A.S.No.7 of 2012 and the learned Judge confirmed the findings of the lower court on erroneous grounds.

9. That apart, it is represented on behalf of the respondents 3 to 6 that the petitioners have not approached the court with clean hands and the present suit is not maintainable, thereby sought to dismiss the present Revisions.

10. Heard the learned counsel on either side and perused the pleadings as well as the counter pleadings and the Judgments passed by the courts below, appellate court as well as this Court.

11. On going through the Judgment passed in O.S.No.289 of 2003 filed by the petitioner in C.R.P.No.1493 of 2020 against the respondents, it could be seen that as far as seven issues have been framed for



consideration, out of that, it is relevant to consider the fourth issue, viz., “4.

Whether the suit is bad for partition because of non-inclusion of Chennai property?”. The trial court, taking shelter of Ex.B.4 concluded that the said property was purchased in the name of the petitioners in both the CRPs out of the fund provided by the 1st respondent. Further, the trial court proceed to state that after the purchase, the property was under the effective control of the petitioners and they have raised the loan, constructed the house and discharged debt and the same is proved by Exs.A.5 and A.6, loan receipts. The petitioners accepted that out of the fund donated by the 1st respondent, they have purchased the property and also having effective control over the house property at Chennai, so it was concluded that the property at Chennai is the petitioners' individual property and the same need not be added in the partition suit.

12. It is important to note that aggrieved by the order passed by the court below in O.S.No.289 of 2003, the 1st respondent and the respondents 3, 5 & 6 have preferred an Appeal Suit No.7 of 2012 against the petitioners. The appellate court also affirmed the findings of the lower court. As against the same, the legal heirs of the 1st respondent, viz., respondents 3, 5 & 6 have preferred Second Appeal No.736 of 2014



C.R.P.Nos.649 and 1493 of 2020

against the petitioners. This Court also was of the view that the suit mentioned property cannot be considered as joint family property, the 1st respondent / father, did not contribute any amount for the purpose of development and the petitioners have borrowed several lakhs and developed the property, thereby held that the present suit schedule property need not be included in the suit for partition.

13. In the present case on hand it is clear that the schedule of property mentioned by the petitioner in C.R.P.No.1493 of 2020 / plaintiff in O.S.No.1216 of 2019 is situated at Chennai and trial court in O.S.No.289 of 2003 on 28.07.2010, Appellate Court in A.S.No.7 of 2012 on 28.10.2013 as well as this Court in S.A.No. 736 of 2014 on 20.10.2022, with respect to the schedule mentioned property in O.S.No.1216 of 2019, had held that though in view of the recitals in the sale deed Ex.P.1 that a sum of Rs.1,10,000/- was paid by the 1st respondent/ father for purchasing the said property, but the Petitioner in C.R.P.No.1493 of 2020/ plaintiff and the petitioner in C.R.P.No.649 of 2020 / defendant in O.S.1216 of 2019 , have borrowed several lakhs and developed the property and discharged the debts, which is evident through by Exs.A.5 and A.6 and admittedly, the 1st respondent / father had not contributed any amount for development of the



C.R.P.Nos.649 and 1493 of 2020

property and came to the conclusion that the subject mentioned property need not be included in the suit for partition.

14. Considering the above said facts and circumstances of the case and in view of the judgment passed in S.A.No736 of 2014 dated 20.10.2022, the property is not a joint family property, thereby the 1st respondent / father is not a necessary party to the suit and the partition is only between the petitioners in the present Revisions and taking note of the fact that the 1st respondent / father died and the legal heirs / respondents 3 to 6 are also not entitled to the suit property and pending S.A.No.736 of 2014, the 1st respondent / father was impleaded by way of I.A.No.1 of 2019 before the court below and now that in S.A. No.736 of 2014, it has been decided that the subject mentioned property is an individual property of the petitioners in the present Revisions, this Court has no hesitation to set aside the order passed in I.A.No.1 of 2019 in O.S.No.1216 of 2019 dated 06.12.2019.

15. Accordingly, the present Civil Revision Petitions are allowed and the order passed in I.A.No.1 of 2019 dated 06.12.2019, impleading the 1st



C.R.P.Nos.649 and 1493 of 2020

respondent-father is set aside. Consequently, connected miscellaneous petition is closed. No costs.

08.03.2023

Index : Yes/No
Internet : Yes/No
Speaking /Non-Speaking Order
ssd

To
The XVIII Additional City Civil Court,
Chennai



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C.R.P.Nos.649 and 1493 of 2020

V.BHAVANI SUBBAROYAN, J.,

ssd

C.R.P.Nos.649 and 1493 of 2020
C.M.P.No.3350 of 2020

08.03.2023