



CRP.No.3659 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.3659 of 2012
and MP.No.1 of 2012

1.G.Pavayee
2.G.Murugasen
3.G.Thangarasu

... petitioners

Vs.

1.R.Ragu
2.Kanniammal
3.C.Sellammal

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 19.06.2012 in IA.No.763 of 2012 in OS.No.82 of 2012 passed by the District Munsif Court, Sankari.

For Petitioners : Mr.V.Subramanian
for Mr.T.Arockia Dass

For Respondents
For R1 : Mr.V.Sundaravadhanan
For R2&3 : No appearance

ORDER

This civil revision petition has been filed to set aside the fair and decretal order dated 19.06.2012 in IA.No.763 of 2012 in OS.No.82 of 2012 passed by the District Munsif Court, Sankari, thereby allowed the petition to amend the plaint.



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2. Heard, the learned counsel for the petitioners. Though, Mr.V.Sundaravadhanan, learned counsel entered appearance for the first respondent earlier, he filed memo stating that already he handed over the entire case bundle along with change of vakalat. Even then, the first respondent failed to engage any counsel on his behalf to appear before this Court.

3. The petitioners are the defendants 1 to 3 in the suit filed by the first respondent for partition. The first respondent originally filed suit as against five defendants. Originally, the suit property belongs to one Avinasi Nadar. He had two daughters and one son. The one son died and his legal heirs are the petitioners 1 to 3 and the second respondent herein. The fifth defendant is one of his daughter. Another daughter is one, Sellammal. Therefore, the said Sellammal had 1/3 share in the property, which was purchased by the first respondent herein. On the strength of the sale deed, he filed suit for partition claiming 1/3 share of the property.

4. While pending the suit, the first respondent filed petition seeking amendment to include the name of the said Sellammal in the place of the said Kandayee @ Kandayammal who was the fifth defendant in the suit for the reason that it was mistakenly stated as Kandayee @ Kandayammal instead of Sellammal. Admittedly, Avinasi Nadar had one son and two daughters i.e. Gurunatha Nadar,



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Kandayee @ Kandayammal and Sellammal. From the said Sellammal, the first respondent purchased her 1/3 share of the property. Therefore, the first respondent is being the purchaser of the property, steps into the shoes of the said Sellammal and filed suit for partition. He rightly impleaded the legal heirs of the son of the Avinasi Nadar and another daughter. There is absolutely no need to implead his vendor in the place of another daughter. The court below without considering the above facts and circumstances of the case and without stating any reason, mechanically allowed the petition. Therefore, this Court finds infirmity in the order passed passed by the court below. As such, the same is liable to be set aside.

5. Accordingly, the fair and decretal order dated 19.06.2012 in IA.No.763 of 2012 in OS.No.82 of 2012 passed by the District Munsif Court, Sankari are set aside and this civil revision petition is allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

12.01.2023

Speaking/non-speaking

Index : Yes/No

Internet : Yes

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G.K.ILANTHIRAIYAN, J.

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To
The District Munsif Court,
Sankari

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