



CRP No.1850 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2023

CORAM:

THE HONOURABLE Mr. JUSTICE LAKSHMI NARAYANAN

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and C.M.P.No.14430 of 2021

1.Mrs.Nirmala
2.Mrs.Devika

... Petitioners

Vs

1.Balaji
2.Mahesh

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decree made in I.A.No.2 of 2019 in O.S.No.2006 of 2019 on the file of I Additional Judge, City Civil Court, Chennai dated 17.12.2019.

For Petitioners : Mr.K.A.Ravindran

For Respondents : Mr.B.Madhan Babu

ORDER

This Civil Revision Petition arises against an order transposing the defendants 2 and 3 as plaintiffs.

2. The short facts of the case are that one R.Sankaralingam filed a suit



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for declaration and injunction before this Court in C.S.No.497 of 2017. It is the case of Sankaralingam that he purchased the property in the name of Mrs.Vijayalakshmi in the year 1977. According to him, Mrs.Vijayalakshmi, his wife is not the owner of the property, and in effect, he is the owner.

3. His daughter Mrs.Nirmala presented a suit for partition in O.S.No.4789 of 2016 stating that she is entitled to 1/5th share. Her claim is that the property belongs to her mother Mrs.Vijayalakshmi and therefore, on the death of her mother Mrs.Vijayalakshmi, her legal representatives, viz., Sankaralingam, Nirmala, Balaji, Mahesh and Devika are entitled for equal share. The notice for partition constrained Sankarlingam to present the suit. Pending the suit, Sankaralingam passed away on 15.08.2019.

4. In order to continue the suit, which in the meanwhile had been transferred to City Civil Court and re-numbered as O.S.No.2006 of 2019 on the file of I Additional Court, City Civil Court, Chennai, an application was taken out in I.A.No.2 of 2019 to transpose the defendants 2 and 3 as plaintiffs. The same came to be allowed on 17.12.2019. Aggrieved over the



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same, the present Civil Revision Petition has been filed.

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5. Heard Mr.K.A.Ravindran, learned counsel for the petitioner and Mr.B.Madhan Babu, learned counsel for the contesting respondents.

6. Mr.K.A.Ravindran, learned counsel would submit that the sons are claiming the property by way of a Will executed by Sankarlingam in their favour on 12.04.2017. Therefore, the said Will has to be probated. Otherwise, there is a bar of filing an application under Section 213 of Indian Succession Act.

7. Per contra, Mrs.B.Madhan Babu, learned counsel for the respondents would submit that they are not staking an independent claim but are only representing the estate of the deceased Sankaralingam.

8. I have carefully perused the records and have considered the arguments on either side.



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9. Probate is necessary only if the parties are claiming their own right,

Today, that issue is not before this Court. On the death of Sankaralingam, the property vests with the legal heirs. It is only at that stage, the issue of probate will arise. As to whether the suit schedule mentioned property belongs to the estate of Sankaralingam is the subject matter of the dispute in the present case, If the case of the defendants 1 and 4 is accepted, then the Court will have to dismiss the suit as abated. However, the sons viz., Balaji and Mahesh are the legal representatives within the meaning of the Code of Civil Procedure and claim to represent the estate of the deceased Sankaralingam against the claims made by Nirmala and Devaka. If this suit is decreed, then the property would vest with Sankaralingam estate and consequently the Will dated 12.04.2017 will operate. It is at that stage, a probate is necessary for the purpose of continuing any action.

10. At the present stage, there is no dispute in relationship. The defendants 2 and 3 are admittedly the sons of Sankaralingam and they are representing the estate against adverse interest projected by Nirmala. The estate has to be represented and therefore, the deceased sons whose interest



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coalesces with that of the father can continue the proceedings.

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11. Therefore, the revision against the order passed in I.A.No.2 of 2019 in O.S.No.2006 of 2019 does not deserve consideration. Therefore, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No
Speaking order/Non-speaking order
sr

V.LAKSHMINARAYANAN,J.

sr

To

The I Additional Judge, City Civil Court, Chennai

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