



C.R.P.No.3980 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.3980 of 2014

1.J.Savithri

2.J.Sabarinathan

... Petitioners

Vs.

1.Selvaraj

2.Singaravelan

3.Sreenivasan

4.Kamatchi

5.Vijayalakshmi

6.Vetriselvan

7.Krishnaveni

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed by the learned Principal Subordinate Judge, Coimbatore, in E.A.No.24 of 2013 in E.P.No.31 of 2014 dated 09.07.2014.

For Petitioners : Mr.S.Karthikai Balan

For Respondents : Mr.L.Mouli for RR1, 2, 4 and 5
No appearance for RR3, 6 and 7



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ORDER

I am constrained to exercise the *suo motu* powers under Article 227 of Constitution of India in this case.

2. The admitted case of the plaintiff in O.S.No.899 of 1991 is that the property belonged to one Chinna Pappal. She is said to have executed a registered Will dated 12.07.1964 bequeathing the entire properties to her sons namely C.K.Kannuswamy Pillai and K.Govindarajulu. On the demise of C.K.Kannuswamy Pillai, his legal heirs and K.Govindarajulu partitioned the property by way of a registered document dated 27.10.1988. The plaintiff would further aver that the property obtained from a paternal grandmother should be treated as joint family property. On that basis, the plaintiffs made a claim of 6/7 share in favour of the plaintiff and 1/7 share for the defendant. The suit was decreed in and by a judgment dated 06.08.1997. The judgment reads as follows:



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“ The suit for passing decree directing the division of the suit property into 7 equal shares and allot the plaintiff 6 shares out of it and put them in possession thereof and appoint a Commissioner to effect the division of the property and award the mesne profits from the date of suit till realisation of the rate of Rs.500/- and for costs.

Defendant counsel report no instructions. Defendant called absent and set exparte. P.W.1 examined. Exs.A1 and A2 marked. Claim proved. Preliminary decree passed with costs.”

3. A perusal of the said judgment shows that it does not comply with the requirement of Order 20 Rule 5 of CPC. Even if the defendant had remained ex-parte, it is the duty of the Court to give reasons for its judgments. It is all the more necessary where the defendant has remained ex-parte, the Court should analyse the case of the plaintiff and come to a just conclusion.

4. It is the admitted case that the property belongs to the paternal grandmother. The principles of Hindu Law are very clear that in



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order to claim the ancestral property, it should be only from a male ascendant not from a female ascendant. In other words, if the property belonged to Chinna papa's husband perhaps the claim of ancestral nature of the property could have been urged and I would have refrained myself from interfering only on the basis that the judgment is unreasoned judgment. In this case, I am able to see that not only the judgment is unreasoned but the claim of the property being an ancestral property is made through the female line. Such a proposition is unknown to civil law. Where a judgment is contrary to law, this Court, in the case of *Annapoorni Vs. Janaki reported in 1995 (1) LW 141*, has held that the Court has to necessarily interfere with the judgment in the exercise of the powers of the revision and set aside the same. It is possible that the plaintiff will have a share in the property by virtue of a partition deed entered into in the year 1988 but that cannot be treated as a joint family property. This fact escaped from the notice of the learned II Additional Subordinate Judge, Coimbatore, while dealing with the suit on 06.08.1997.



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5. Mr.L.Mouli, learned counsel for the respondents would point out that this revision arises only against the application under Section 47 of the Code of Civil Procedure and it had been dismissed by the trial Court without giving an opportunity to him and therefore, I have to set aside and remand it for fresh disposal.

6. When I have found the judgment and decree itself to be contrary to law applicable under the Hindu Succession Act and the Code of Civil Procedure, I am not bound by this technical objection taken by the learned counsel for the petitioner. Infact the Supreme Court in the case of *K.P.Natrajan and another Vs. Muthalamman and others* reported in **2021 (15) SCC 817 (Per V.Ramasubramanian J.)** has held that during the course of dealing with a revision under Section 5 of the Limitation Act, if it is found the decree is contrary to law, it can be interfered with. If in a collateral proceedings, it comes to the notice of the Court that the judgment is a contrary to law, even then the High Court, under Article 227 of Constitution of India, is empowered to set aside the decree.



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7. Respectfully following this judgment and applying the principle of Hindu law to the present case, I am not in a position to sustain the decree for partition as the same is contrary to law. No joint family claim arises when the property claimed descends through a female. Consequently, the judgment and decree in O.S.No.899 of 1991 dated 06.08.1997 is set aside.

8. While allowing the Civil Revision Petition in exercise of *suo motu* power conferred on me since I am setting aside the decree itself, the question of dealing with Section 47 of CPC does not arise. Therefore, the application under Section 47 of Civil Procedure Code is closed and Civil Revision Petition is accordingly disposed off.

9. In view of the above, the suit in O.S.No.899 of 1991 is restored to the file of the II Additional Subordinate Judge, Coimbatore. The learned II Additional Subordinate Judge, Coimbatore is requested to



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take up the suit and dispose of the same within a period of 9 months from the date of receipt of a copy of this order.

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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To

The Principal Subordinate Judge, Coimbatore.



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V.LAKSHMINARAYANAN,J.

Vkr

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