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C.R.P.(PD)No.2218 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).No.2218 of 2019

1.M.Kasinathan (Deceased)
2.Nirmala Kasinathan
3.M.K.Kandhaswamy
4.Sathish Kasinathan
5.Prabu kasinathan .. Petitioners
(Petitioners 2 to 5 are impleaded by order of this Court
dated 10.08.2023 in CMP.No.18276 of 2023 in
CRP(PD)No.2218 of 2019)

VS

1.M.Dayalan
M.Boopathy (Deceased)
2.Sundarammal
3.Tamilselvi
4.B.Arunraj
5.B.Sanju
6.B.Anusha .. Respondents

Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 15.03.2019 made in I.A.No.119 of 2016 in O.S.No.16 of 2015 on the file of Third Additional District Court, Vellore at Thirupattur.

For Petitioners : Mr.N.C.Thirumalai Balaji

For Respondents : Mr.T.M.Hariharan (for R3 to R6)

No Appearance (for R1 & R2)



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ORDER

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The first petitioner is the first defendant in the suit. The respondents 3 to 6 presented a suit for partition. In the said partition suit, an application for amendment was taken out to include the properties standing in the name of the first defendant as properties which have been said to be partitioned. The claim of the first defendant is that these properties are self acquired and therefore, they cannot be included in a suit for partition.

2.The learned trial Judge allowed I.A.No.119 of 2016 in O.S.No.16 of 2015 holding whether the properties are self acquired or joint family properties will be known only at the time of final disposal of the suit after recording evidence on the merits of the case. She has granted liberty to the petitioner to agitate a fact that the properties are the self acquired properties. Against the allowing of the application under Order 6 Rule 17 of the Code of Civil Procedure, the present civil revision petition has been filed.

3.I have gone through the order of the learned Trial Judge in I.A.No.119 of 2016 in O.S.No.16 of 2015 dated 15.03.2019. The claim of the plaintiff is that the properties are the joint family property. Whether the properties are the joint family property or self acquired properties can



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be appreciated only after recording evidence on the merits of the case.

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4.The learned trial Judge has appreciated the position of law correctly. She has also made it clear that it is open to the first defendant to let in evidence to show that the properties are self acquisition during trial. No prejudice is caused to the first defendant on account of the fact that the properties are included in the suit schedule mentioned property.

5.On the contrary, if the properties are not included, the suit could be dismissed for partial partition. The learned trial Judge has rightly allowed the application for amendment. I do not find any illegality or irregularity, this civil revision petition is dismissed. No costs.

10.08.2023
(2/2)

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

vs

To

The Third Additional District Court,
Vellore at Thirupattur.



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V. LAKSHMINARAYANAN,J.

VS

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