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C.R.P.No.11 of 20...

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.No.11 of 2017

and

C.M.P.No.87 of 2017

1. R.Ramasamy (Died)
2. R.Kuppusamy @ Karuppa Gounder (Died)
3. R.Kittusamy (Died)
4. E.Saraswathi
5. Dhanalakshmi
6. E.Mahendran
7. P.Selvalakshmi
8. P.Ravikumar
- 9 P.Karthick

[Petitioner-1 Died. Petitioners 4 to 9 brought on record as LR's of the deceased Petitioner-1, viz., R.Ramasamy vide Court order dated 23.02.2023 made in CMP. Nos.3783, 3784 and 3787 of 2023 in CRP. No.11 of 2017]

10. K.Gopal
11. S.Sivakami
12. S.Suresh

[Petitioner-2 Died. Petitioners 10 to 12 brought on record as LR's of the deceased petitioner, viz., R.Kuppusamy @ Karuppa Gounder vide Court order dated 23.02.2023 made in CMP.Nos.3776, 3778 and 3782 of 2023 in CRP.No.11 of 2017]

13. K.Velumani



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14. R.Savithri
15. R.Rajamani
16. K.Rajeshwari
17. S.Lakshmi
18. K.Boopathy

[Petitioner-3 Died. Petitioners 13 to 18 brought on record as LR's of the deceased petitioner-3, viz., R.Kittusamy vide Court order dated 23.02.2023 made in CMP.Nos.3774, 3775 and 3780 of 2023 in CRP.No.11 of 2017]

... Petitioners

Vs.

1. K.Ponnusamy
2. K.Gurusamy
3. Rajamani
4. Theivathal
5. K.Arumugam
6. R.Chinnammal
7. K.Sivasamy
8. K.Kanthasamy
9. K.Palanisamy
10. M.Periyamani @ Sulochana
11. M.Pappanan
12. M.Thangamani
13. M.Sulochana
14. Poovathal
15. Saraswathi

[Petitioner-1 Died. Respondents 13 to 15 brought on record as LR's of the deceased Petitioner-1, viz., R.Ramasamy vide Court order dated 23.02.2023 made in CMP.Nos.3783, 3784 and 3787 of 2023 in CRP.No.11 of 2017]



16. Kaliyappan

[Petitioner-2 Died. Respondent-16 brought on record as LR of the deceased Petitioner, viz., R.Kuppusamy @ Karuppa Gounder vide Court order dated 23.02.2023 made in CMP.Nos.3776, 3778 and 3781 of 2023 in CRP.No.11 of 2017]

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and final order dated 21.10.2016 made in I.A.No.228 of 2016 in O.S.No.120 of 2015 on the file of V Additional District Judge, Coimbatore.

For Petitioners : Mr.R.Bharath Kumar

For Respondents : Mr. N.Manokaran (for R1 to R5)

No appearance (for R6, R7 & R9)

No appearance (for R8, R10 to R12)

ORDER

This Civil Revision Petition has been filed against the fair and final order dated 21.10.2016 made in I.A.No.228 of 2016 in O.S.No.120 of 2015 on the file of V Additional District Judge, Coimbatore, thereby dismissing the application filed by the defendants 1 to 3 for rejection of plaint.



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2. The learned counsel for the petitioners submitted that the first petitioner, the second petitioner and the third petitioner viz., R.Ramasamy, R.Kuppusamy @ Karuppa Gounder and R.Kittusamy have died, respectively and the legal heirs of the deceased/first, second and third petitioners have been substituted in the Civil Revision Petition.

3. The respondents 1 and 5 filed a suit for partition as against the petitioners and the other defendants. While pending the suit, the petitioners 1 to 3/defendants 1 to 3 filed a petition for rejection of plaint on the ground that the plaintiffs are legally barred from filing the suit and they are not entitled to claim $\frac{1}{2}$ share in the suit properties on the death of one late Raman @ Ramana Gounder, who died on 05.08.1935. Their statutory provisions for claiming any share in the suit properties. The rule of law prevalent at that time does not confer any legal status to the wife and daughter of the said Raman @ Ramana Gounder to claim any right in the suit properties. The plaintiffs are claiming the suit properties through the daughter of the said Raman @ Ramana Gounder, which is barred by law. The wife and the daughter of the said Raman @ Ramana Gounder are were



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not deemed to be his Class-I legal heirs under the Hindu Law at the time of his demise. The rule of law into that did not grant any statutory right to the plaintiffs to claim any share in the suit properties. It is further alleged that the plaintiffs have not paid any joint possession and enjoyment of the suit properties. It is settled law that while considering an application under Order 7 Rule 11 of CPC, the Court has to examine the averments made in the plaint and the pleas taken by the defendants in their written statement which would be irrelevant and that no amount of evidence can be looked into for invoking the power of rejection of the plaint under Order 7 Rule 11 of CPC. Therefore, whatever the averments made in the plaint, it can be looked into and pleas taken by the petitioners in their written statement would be irrelevant and no amount of evidence can be looked into at the time of considering the application for rejection of plaint.

4. According to the plaintiffs, viz., the respondents 1 to 5 herein, the suit properties are the joint family properties of late Karuppa Gounder and later the same was in joint possession and enjoyment of his sons, viz., said Raman @ Ramana Gounder and Rayan @ Raya Gounder and that the said Raman @ Ramana Gounder died on 05.08.1935. Therefore, the petitioners



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herein filed a petition for rejection of plaint on the ground that the said Raman @ Ramana Gounder died in the year 1935 and as such, the respondents 1 to 5 are not entitled to have any share claiming through his wife and daughter.

5. On a perusal of the plaint, it reveals that the wife of said Raman @ Ramana Gounder, viz., Ponnakkal died on 25.10.1976 and their daughter Subbathal died on 21.12.2010. After demise of the said Raman @ Ramana Gounder, his wife and daughter were in joint possession and enjoyment of the suit properties. After demise of the said Subbathal, the respondents 1 to 5 herein are in joint possession and enjoyment of the suit properties with the other legal heirs of the said Rayan @ Raya Gounder. Therefore, the grounds raised by the Petitioners can be decided only after full fledged trial and all the issues must be gone into only by the law in evidence. Therefore, the Court below rightly dismissed the petition and as such, this Court finds no infirmity or illegality in the order passed by the Court below.



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6. Accordingly, this Civil Revision Petition is dismissed. However, the trial Court is directed to dispose of the suit itself, i.e in O.S.No.120 of 2015 on the file of V Additional District Court, Coimbatore, within a period of six months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed. No costs.

23.02.2023

Index : Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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To

1. The V Additional District Judge, Coimbatore.
2. The Section Officer,
V.R. Section,
High Court, Madras.



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G.K.ILANTHIRAIYAN,J.

Kv

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