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CRP(PD)No.4042



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

**C.R.P.(PD)No.4042 of 2019
and C.M.P.No.26536 of 2019**

1.Radhabai

2.Chandramohan

3.Pingalan

4.Mahendran

5.Kawdilyan

... Petitioners

Vs.

1.S.Shanmugam

2.V.Ranganayaki

3.B.Sai Narasimmalu

4.B.Iswariya

5.Vijayalakshmi

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 15.10.2019 in I.A.No.4 of 2019 in O.S.No.40 of 2004 on the file of the I Additional District Court, Erode.

For Petitioners : Mr.N.Srinivasan

For R1 : Mr.Bala Ganesh
for Mr.T.M.Hariharan

For RR2 to 4 : No appearance

ORDER



Heard the learned counsel for the petitioners and the learned counsel for the 1st respondent. I have carefully gone through the records.

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2. The revision arises against an order dated 15.10.2019 in I.A.No.4 of 2019 in O.S.No.40 of 2004 on the file of the I Additional District Court, Erode.

3. The defendants 6 to 10 are the revision petitioners and the plaintiffs are the respondents 1 to 4. The plaintiffs filed an application in I.A.No.4 of 2019 under Order XVIII Rule 1 of the Code of Civil Procedure to direct the defendants to enter the witness box to adduce evidence first and permit the plaintiffs to adduce evidence later.

4. The property originally belonged to one Rangasamy Naicker. He settled the property in favour of his wife Kaliasammal. On the death of Kaliasammal, the property devolved upon her legal heirs equally. Kaliasammal and Rangasamy Naicker had three daughters viz., Sellammal, Kaveriasammal and Alamelammal. Therefore, on the death of Kaliasammal, each of the daughters is entitled to get 1/3rd share in the property.

5. Representing these three branches are the plaintiffs, defendants 1 to 5 and defendants 6 to 10. It was the case of the defendants that Alamelammal's 1/3rd share devolved on the plaintiffs and defendants 2 to 5. It is admitted by both sides that Kaveriasammal died issue less. However, in so far as Kaveriasammal's 1/3rd share is concerned, it is pleaded that out of love and affection that she had for the son of



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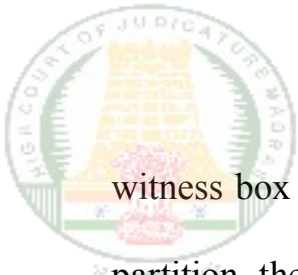
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Sellammal viz., one Balakrishnan, she had written a Will on 31.12.1991. It is also admitted that the said Kaveriammal died on 26.11.2012. In other words, the claim of the plaintiffs, in so far as the share of Kaveriammal is concerned, is denied only on the ground that she had executed a Will in favour of Balakrishnan. The legal heirs of Balakrishnan are defendants 6 to 10.

6. If the Will is not proved, the plaintiffs will have share. Therefore, the Will has been projected by the defendants 6 to 10 in order to prevent the natural line of succession, by which both the plaintiffs as well as the defendants will have equal share in the property of Kaveriammal. Looking it in an other angle, if the Will is proved, the plaintiffs will not be having any share over the property of Kaveriammal. That being the only issue, the Will has to be necessarily proved.

7. The Will is propounded by the defendants 6 to 10. Therefore, if they are to depose first and prove the Will, then nothing further would remain to be tried in so far as the share of Kaveriammal is concerned. If the Will is not proved, even then nothing will remain to be tried, because relationship between the parties and their respective shares will devolve as per the Hindu Succession Act. Therefore, the trial Court has rightly directed the defendants 6 to 10 to enter the witness box and prove the Will.

8. Mr.N.Srinivasan, learned counsel for the petitioners vehemently contended that it is for the plaintiffs to prove the case and the defendants need not enter the



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witness box to disprove the same. That proposition will apply to all suits. In a suit for partition, the Court while passing the preliminary decree only declares the share of the property. In this case, the ground on which that share is being denied, is not the lack of the relationship or denial of the title of Rangasamy Naicker or his wife Kaliasammal, but the projection of the Will dated 31.12.1991. Hence, in the circumstances of this case, examination of the defendants to prove the Will becomes essential.

9. In fine, the Civil Revision Petition is dismissed and consequently, the order dated 15.10.2019 in I.A.No.4 of 2019 in O.S.No.40 of 2004 on the file of the I Additional District Court, Erode, stands confirmed. The suit, being pending for a long time, the learned I Additional District Judge, Erode, is requested to expedite the trial of the suit and complete the same within a period of nine months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

11.07.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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V.LAKSHMINARAYANAN,J.



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I Additional District Judge, Erode.

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