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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2023

CORAM: JUSTICE N.SESHASAYEE

C.R.P. No.3346 of 2018 and C.M.P. No.18985 of 2018

1.Balasubramaniam
2.Uma ... Petitioners

Vs.

1.Mohana
2.Kavitha
3.Nirmala Devi
4.Durairaj
5.Elangeshwaran
6.gunavathi ... Respondents

PRAYER: The Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 30.08.2018 passed in I.A. No.52 of 2018 in O.S. No.209 of 2014 on the file Sessions (Fast Track Mahila) Judge, Namakkal.

For Petitioner : Mr.S.Senthil

For Respondents : Mr.K.Ravi Anatha Padmanabhan,
Senior Counsel
for Mr.B.Thirumalai for R1 & R2

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O R D E R

The suit was laid for declaration of plaintiffs' 2/3rd share in 'B' schedule property and also partition of the said property.

2. The background of the case may be stated as below.

- The plaintiffs are daughters of certain Chinnusamy. The second defendant is the brother of Chinuusamy. The defendants 3 and 4 are the sons of the second defendant and 5th defendant is the wife of the third defendant.
- The plaintiffs father passed away even when the plaintiffs were minors and they were under the care of the second defendant and his children, they are since married.
- On 26.10.1998 there was a partition in which Chinnusamy was allotted 'B' schedule property in the plaint. The plaintiffs seek partition of 'B' schedule property.
- This is being contested by the defendants. They have now taken out an application under Order VII Rule 11 CPC in I.A. No.52 of 2018 in O.S. No.209 of 2014. The defendants' contention is that on 23.02.2004 and

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25.02.2004, the plaintiffs had sold their respective shares in the 'B' schedule property in favour of their cousin, the third defendant. The defendants contend that the plaintiffs have not chosen to seek a relief of cancelling this document and sought rejection of the plaint under Order VII Rule 11 CPC.

3. This application was contested by the plaintiffs and the trial court vide its impugned order dated 30.08.2018 dismissed the same. The reasoning of the court below is that the defendants cannot direct the plaintiffs about the choice of relief they want to seek. This order is now under challenge in this revision.

4. Heard both sides and perused the materials available in the form of typed set of papers.

5. The learned counsel for the revision petitioners/defendants argued that inasmuch as the plaintiffs have executed two sale deeds referred to above, without they have set those documents aside cannot sustain a plea of partition. And, inasmuch as they have not sought it, the suit itself cannot be sustained.

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6. After carefully weighing the submissions of the learned counsel for the revision petitioner, this court finds that even though they are impressive at the first instance, yet these are all aspects this court may have to reckon at the time of final disposal. In other words, the stage is premature for this court to entertain the maintainability of the suit due to the failure of the plaintiffs to seek some relief as is indicated by the defendants/revision petitioners.

7. In conclusion, this court does not find any merit in the civil revision petition and accordingly, the civil revision petition is dismissed. However, there is no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

14.03.2023

Asr

To
The Sessions (Fast Track Mahila) Judge, Namakkal.

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N.SESHASAYEE, J.,

Asr

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