



C.R.P.(MD).No.904 of 2019

-BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 16.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.904 of 2019

and

C.M.P(MD) No.5234 of 2019

1. K.Rajalakshmi

2. Sree Mohana

V.Kannan (died)

3. S.Perumal

(2nd Petitioner mentally retarded

Represented through 1st Petitioner)

... Petitioners/Respondents/
Defendants

-vs-

1. K.Padmavathi @ Devi

2. L.Makarajothy

3. L.Manikandan

... Respondents/Petitioners/Plaintiffs

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order dated 18.01.2019 passed in I.A.No.427 of 2018 in O.S.No.5 of 2013 on the file of the Sub-Court, Periyakulam.

For Petitioners : Mr.V.N.Arjun
for Mr.N.Vallinayagam
For Respondents : Mr.R.Rajamohan



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ORDER

The present Civil Revision Petition has been by the petitioners under Article 227 of Constitution of India, to set aside the order dated 18.01.2019 passed in I.A.No.427 of 2018 in O.S.No.5 of 2013 on the file of the Sub-Court, Periyakulam.

2. The petitioners herein are the defendants and the respondents herein are the plaintiffs before the Court below.

3. For the sake of convenience, the parties will be referred to as per the litigative status before the trial Court.

4. The learned counsel for the petitioners/defendants has vehemently submitted that the very order passed by the Court below permitting the plaintiffs who are brothers's son of the 3rd defendant to have a change in ratio of share from 1/4th to 1/3rd on the demise of 3rd defendant, is contrary to Section 8 of the Hindu Succession Act, and he prayed to allow this Civil Revision Petition.



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5. The learned counsel appearing for the respondents would fairly concede that their client comes under class II heir in entry four. Therefore, as per Section 9 of the Hindu Succession Act, the preceding entry have a right over the later entry.

6. This Court has given anxious consideration to the submissions of the learned counsel on either side.

7. It is an admitted fact that the 3rd defendant viz., V.Kannan died issueless. Upon the demise of said Kannan, who also happened to be the mentally retarded person, the plaintiffs have filed an amendment application to alter the quantum of share from 1/4th to 1/3rd on the ground that they are the legal heirs of the 3rd defendant.

8. In respect of succession of male Hindu, Section 8 of the Hindu Succession Act provides Rules of succession. For ready reference, Section 8 of the Hindu Succession Act, is extracted hereunder:

“8. General rules of succession in the case of males.—The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter:-



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- (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;
- (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;
- (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
- (d) lastly, if there is no agnate, then upon the cognates of the deceased.”

9. As per the above Section, if there is no heir of class I, then the class II heirs are entitled to have the share of the deceased male Hindu. Admittedly, the plaintiffs are not the class I heirs and they would only come as class II heir. But, in the plaint, apart from the plaintiffs, the other sharers who are brothers and sisters of the deceased Kannan, were impleaded as parties to the suit. As per class II, the brother and sister comes in the second entry, whereas, the plaintiffs being the son of predeceased brother come in the fourth entry. Therefore, as per Section 9 of the Hindu Succession Act, prior entry of class II shall be preferred to the later entry. Since the petitioners come within the later entry, as per the Hindu Succession Act, they are not entitled to have the share of the deceased Kannan/3rd defendant.



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10. In this regard, the learned counsel for the petitioners has also relied upon the judgment of this Court reported in **2019 (2) CTC 456 (Thirthagiri Vs.Chinnathambi Gounder and others)**. However, the Court below, without taking into consideration the above aspects, has permitted the amendment as if the plaintiffs can also have a share of the deceased 3rd defendant, which finding is contrary to the Sections 8 and 9 of the Hindu Succession Act and perverse. Therefore, the same is liable to be interfered with.

11. In the result, this Civil Revision Petition is **allowed** by dismissing the amendment application in I.A.No.427 of 2018. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

16.08.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The Sub-Court,
Periyakulam.



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C.KUMARAPPAN,J.

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