



C.R.P.(MD) No.1208 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.06.2023

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(MD) No.1208 of 2023

and

C.M.P. (MD) No.5841 of 2023

1.Ganesan

2.Thirumalaiachi

3.Masanammal @ Pappathi

4.Pechiammal

... Petitioners

Vs.

1.Valliammal

2.Veeraputhiran

3.Avudayammal

... Respondents

Civil Revision Petition filed under Section 115 of Civil Procedure Code, 1908, to set aside the fair order and decretal order dated 22.02.2023 in I.A.No.2 of 2022 in O.S.No.129 of 2022 on the file of the Additional District Court (Fast Track Court), Tenkasi.

For Petitioners : Mr.VR.Shanmuganathan



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ORDER

WEB COPY This Civil Revision Petition has been filed to set aside the fair and decretal order dated 22.02.2023 passed by the Additional District Court (Fast Track Court), Tenkasi in I.A.No.2 of 2022 in O.S.No.129 of 2022.

2. The petitioners are the first, second, fourth and fifth defendants in O.S.No.129 of 2022 on the file of the Additional District Court (Fast Track Court), Tenkasi. The first defendant is the plaintiff and the other respondents are the third and sixth defendants. The said suit was filed by the first defendant for partition of suit schedule properties.

3. The case of the petitioners is that the plaint is liable to be rejected under Order VII Rule 11 of Code of Civil Procedure, 1908 and that in the pre-suit notice issued by the first respondent, the first respondent has relied on few documents which included the self acquired property of the petitioners.

4. That apart, it is submitted that there was an alienation of property on 10.12.2004 and therefore, the suit is barred in terms of Section 6(5) of the Hindu Succession Act, 1956. It is further submitted that the suit is



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also barred under the *proviso* to Sub-Section (1) to Section 6 of the Hindu Succession Act, 1956 inasmuch as nothing contained in the Sub-Section (1) to Section 6 of the Act shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

5. Although the petitioner may have the case on merits after trial, the partition suit which was properly instituted cannot be short-circuited by invoking the power of the Court under Order VII Rule 11 of Code of Civil Procedure, 1908.

6. In view of the above, the impugned order does not call for any interference. Therefore, the present Civil Revision Petition is liable to be dismissed and is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

01.06.2023

Internet: Yes/No

Index: Yes/ No

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To

The Additional District Court (Fast Track Court), Tenkasi.



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C.SARAVANAN, J.

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