



C.R.P(MD)No.1327 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.06.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.1327 of 2023

and

C.M.P(MD)No.6640 of 2023

- 1.Valliammal
- 2.Arumugam
- 3.Senthil Kumar
- 4.Muruganantham
- 5.Muthukumar
- 6.Vellammal
- 7.Chinnapalanisamy
- 8.Pragadeesh
- 9.Indra
- 10.Vairamuthu
- 11.Subramaniyan

...Petitioners/
Defendants 1 to 9, 11 & 12

Vs.

- 1.Mariammal



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2.Mareeshwari

3.Murugeshwari

4.Murugeshwari

...Respondents/Plaintiffs

...Respondent No.4/Defendant 10

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to strike off the plaint in O.S.No.345 of 2021 on the file of the Principal Sub Court, Srivilliputhur, Virudhunagar District.

For Petitioner : Mr.S.M.Ramasiva

ORDER

The present civil revision petition has been filed to strike off the plaint in O.S.No.345 of 2021 on the file of the Principal Sub Court, Srivilliputhur, Virudhunagar District.

2. The petitioners are the defendants 1 to 9, 11 and 12 in O.S.No. 345 of 2021 on the file of the Principal Sub Court, Srivilliputhur, Virudhunagar District. The said suit has been filed by the respondents 1 to 3 herein for partition of the suit schedule property, which according to the petitioner stands settled in favour of the petitioner's son, namely, Vaiyapuri Pillai by Subramaniya Pillai by a registered settlement deed, dated 29.08.1972 as Document No.1513 of 1972.



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3. The specific case of the petitioners is that the property in question was a self-acquired property of Subramaniya Pillai, elder son of Thesigamani. Since Subramaniya Pillai was affected with disease and that the male children of his younger brother, namely, Vaiyapuri Pillai took care of him during his illness with love and affection. The property was settled by Subramaniya Pillai in favour of the male descendants of his younger brother, namely, Vaiyapuri Pillai and that the daughters of Vaiyapuri Pillai were given adequate compensation during their marriage. It is therefore submitted that the suit was filed by the respondents herein, namely, two daughters of the Vaiyapuri Pillai, namely, Backiyalakshmi and Mariammal is not maintainable.

4. The learned counsel for the petitioner submits that the property in question was self-acquired property of Subramaniya Pillai and not an ancestral property of Thesigamani, the grandfather and great-grandfather of the plaintiff/respondents 1 to 3. It is therefore submitted that the suit instituted in the year 2021 was nothing but an abuse of Court proceedings. Therefore, the plaint is liable to be struck off.



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5. Although, the petitioner may have a case on merits, the suit that has been filed by the respondents 1 to 3 inspired from the designation of the decision of the Hon'ble Supreme Court in the case of ***Vineeta Sharma Vs Rakesh Sharma*** reported in ***(2020) 9 SCC 1***, I am of the view that the suit cannot be short circuited unless the suit itself barred by law or is an abuse of Court proceedings. The respondents 1 to 3 cannot be shut of their fair chance to explain their case. Therefore, this Court is of the view that the plaint cannot be struck off for summarily under Article 227 of the Constitution of India.

6. The present Civil Revision Petition stands dismissed with the above observations. All issues relating to limitation are left open to be canvassed by the petitioner during trial or filing an appropriate application under Order 7 Rule 9 of C.P.C.

7. Considering the fact that the property has been allegedly settled as early as in the year 1972, the Principal Sub Court, Srivilliputhur, Virudhunagar District shall endeavour to dispose of the suit in O.S.No. 345 of 2021 as expeditiously as possible preferably within a period of 15



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months from the date of receipt of copy of this order. No costs.

Consequently, connected miscellaneous petition is closed.

09.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
sn

To

1.The Principal Sub Court,
Srivilliputhur,
Virudhunagar District.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

SN

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and
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C.SARAVANAN, J.

Today, this case is listed under the caption “for being mentioned’ after this Civil Revision Petition was dismissed on 09.06.2023.

2.The learned counsel for the petitioners submitted that there are certain inadvertent errors in the order of this Court dated 09.06.2023. Specifically, it is submitted that in the last sentence in paragraph No.3, there is a mistake and it has to be substituted.

3.Recording the above submission, the last sentence of paragraph No.3 beginning with 'It is therefore submitted' and ending with 'is not maintainable' shall be substituted to read as under:

“3.The specific case of the petitioners is that the property in question was a self-acquired property of Subramaniya Pillai, elder son of Thesigamani. Since Subramaniya Pillai was affected with disease and that the male children of his younger brother, namely, Vaiyapuri Pillai took care of him during his



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illness with love and affection. The property was settled by Subramaniya Pillai in favour of the male descendants of his younger brother, namely, Vaiyapuri Pillai and that the daughters of Vaiyapuri Pillai were given adequate compensation during their marriage. **It is therefore submitted that the suit was filed by the respondents herein, namely, the 1st respondent and her niece namely, the respondents 2 & 3 is not maintainable.”**

4.Further, in paragraph No.6, instead of 'Order 7 Rule 9 of C.P.C', it shall be read as '**Order 7 Rule 11 of C.P.C**'.

5.The other portions of the order dated 09.06.2023 in C.R.P.(PD). (MD).No.1327 of 2023 shall stands confirmed.

26.09.2023

sn/krk