



C.R.P.(MD) No.1882 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	07.08.2023
Pronounced on	20.12.2023

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No.1882 of 2023

and

C.M.P.(MD) No.9443 of 2023

1.Sakkaraiammal

2.P.K.Radhakrishnan

3.K.Boomiraja

4.K.Balaraman

... Petitioners

Versus

1.Angammal

2.Petchiammal

3.Minnalkodi

4.Anandhi

5.Nishanthi

... Respondents

(Memo dated 06.08.2023 presented in Court on 07.08.2023 is recorded to the effect that R1 & R2 given up, as they remained *exparte* before the Lower Court vide Court Order dated 07.08.2023)



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Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and executable order dated 09.06.2023 passed in the application in I.A.No.2 of 2023 in O.S.No.1052 of 2017 on the file of the Subordinate Court, Thriumangalam.

For Petitioners : Mr.J.Barathan

For Respondents : Mr.K.Pandiarajan for R3 to R5
R1 & R2 given up

ORDER

This Civil Revision Petition is preferred as against the order dated 09.06.2023 passed in I.A.No.2 of 2023 in O.S.No.1052 of 2017 on the file of the Subordinate Court, Thirumangalam.

2. The Revision petitioners are the proposed parties in O.S.No. 1052 of 2017 filed by their mother before the Soubordinate Court, Thirumangalam, for the relief to pass a preliminary decree of partition directing division of the suit properties into four equal shares and to allot one such share to her and for a consequential relief of permanent injunction restraining the respondents/defendants from alienating the suit properties.

3. According to the Revision Petitioners, the suit properties are



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both ancestral properties of revision petitioners 2 to 4 of their grandfather namely Peyandi Thevar and self acquired properties of revision petitioners 2 to 4 grandmother namely Nallakkal. Both of them died intestate leaving behind their mother and the respondents as their legal heirs. The suit properties were jointly possessed and enjoyed by their mother along with the other respondents. The patta stood in the name of their mother and other respondents and the kist receipts also stands in their names.

4. It is submitted that in respect of one fourth share of their mother over the suit properties mentioned in the items 3 to 8, she had executed a registered settlement deed dated 03.11.2017 in favour of the petitioners 2 to 4. Though, the settlement deed had been executed before the institution of the suit, the petitioners 2 to 4 were not arrayed as plaintiffs. Hence, the mother and the proposed petitioners filed the impugned application in I.A.No.2 of 2023 in O.S.No.1052 of 2017 to implead the petitioners/proposed parties as necessary parties to the suit. However, the trial Court erroneously dismissed the said application by its order dated 09.06.2023. The trial Court had erroneously observed that the petitioners had not approached the Court with clean hands therefore, they cannot be



impleaded. Since on the date of institution of the suit, the first petitioner did not have any subsisting interest over the suit properties, there is no cause of action for the suit. Hence, aggrieved against this, the revision petitioners have preferred the present petition against the order passed by the Trial Court.

5. The learned counsel appearing for the revision petitioners would submit that unless the revision petitioners are impleaded as necessary parties to the suit, it would lead to multiplicity of proceedings.

6. On the other hand, the learned counsel appearing for the respondents would submit that the alleged settlement deed dated 03.11.2017 was executed 10 days prior to the institution of the suit by the plaintiff in favour of the proposed petitioners. The mother of the petitioners filed the suit without any subsisting right. However, during the cross examination, the plaintiff denied the execution of the settlement deed.

7. The learned counsel appearing for the respondents would further submit that the above Revision petition filed by the petitioners No.2



to 4 is not maintainable legally, devoid of merits, does not stand the scrutiny of law and is liable to be dismissed. He also submits that the petitioners 2 to 4 lodged their claim to be impleaded as Co-Plaintiffs in the main suit before the trial Court on the basis of the irrevocable gift deed in document No.6458 of 2017 executed and registered at the Registrar office of the Sub Registrar office at Tirupparankundram on 03.11.2017, by the 1st petitioner Sakkaraiammal in favour of her three sons viz petitioners No.2 to 4 thereby relinquishing all her absolute rights and vested interests over the 6 scheduled properties (Against the serial No.3 to 8 in the plaint) out of the 9 properties, being the subject matter of this original suit in O.S.No.1052 of 2017. The date of execution of this irrevocable gift deed was on 03.11.2017, that is 10 days before this original suit which was filed on 13.11.2017 and not during the pendency of the suit proceedings i.e after filing of the suit, which clearly indicates the fact that the 1st petitioner did not have the locus standi and cause of action to file the main suit in respect of the six properties mentioned in Serial No.3 to 8 stated in the plaint but limited to only three ungifted properties. Moreover, the execution of the gift deed 10 days prior to filing of the suit was not at all disclosed at any stage of filing this suit including in the proof affidavit, and never gave up her claim over the gifted



six properties executed in favour of petitioners No.2 to 4. The execution of the said gift deed came to light to the trial Court only upon the production and submission of the certified copy of the said gift deed by respondents No. 3 to 5 in the course of the trial as defence side exhibit and the same was confirmed when the proposed Co-plaintiffs filed the I.A.No.2 of 2023 for their impleadment as Co-plaintiffs claiming partition right over the gifted six properties.

8. He further submits that if the proposed Co-plaintiffs (petitioners No.2 to 4) are impleaded as Co-plaintiffs in the original suit pending in the trial Court to claim partition right over the six gifted properties, it would lead to new cause of action. The very impleadment of Petitioner No.2 to 4 as Co-plaintiffs automatically result in confirming the fact that the 1st petitioner is having cause of action only in respect of 3 properties. The subject matter of the suit getting reduced from nine properties to three properties, it can be irrefutably held that the subject matter of the original suit pending in the trial Court covers only the above said three properties, and hence the coverage of the suit composition if extended/enlarged to nine properties which is not legally maintainable and the petition seeking for



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impleading the petitioners No.2 to 4 is liable to be dismissed. The very filing of the impleading petition by the proposed plaintiffs claiming one fourth share upon the six scheduled properties out of the nine, being the subject matter on the strength of the gift deed executed in favour on 03.11.2017, that is, 10 days prior to the filing of this suit, testifies the fact that this present suit had been filed by the plaintiff, without cause of action and without any locus standi, thereby raising the question upon the maintainability of the main suit. Hence, the trial Court has rightly dismissed the petition which calls for no interference.

9. Heard the learned counsel on both sides and perused the materials on record.

10. Admittedly, the plaintiff is the mother of the revision petitioners 2 to 4. She filed the suit in O.S.No.1052 of 2017 for partition, claiming one fourth share in the suit properties and for consequential relief of permanent injunction. During the pendency of the above suit, the plaintiff, along with revision petitioners 2 to 4, filed I.A.No.2 of 2023 to implead the revision petitioners 2 to 4 as necessary parties to the suit. In the said petition, it is



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averred that prior to the institution of the suit, she had settled six items in the suit properties in favour of the revision petitioners 2 to 4 and therefore, they are necessary parties in the above suit. The object of Order 1 Rule 10 of Code of Civil Procedure is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that, the dispute may be determined in their presence, in order to avoid multiplicity of proceedings.

11. Since the plaintiff had executed the settlement deed in favour of the revision petitioners 2 to 4 in respect of 6 items in the suit properties, they have become proper and necessary parties to the suit and any decree passed in their absence will create multiplicity of proceedings. Since it is the suit for partition, impleading petitioners 2 to 4 as Co-plaintiffs, no prejudice will be caused to the respondents. Moreover, the petitioners, as stated in their affidavit, are ready to give an undertaking that they will not let any further evidence on their side after impleading themselves in the above suit. It is also to be noted that if the petitioners 2 to 4 are not impleaded as necessary parties in the above suit, it will result in denial of their valuable legal rights and it would cause great hardship to the petitioners 2 to 4 and curtail them from claiming the rights in the suit properties. Therefore, in



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order to avoid multiplicity of proceedings, the trial Court ought to have allowed the application. Hence, the impugned order in I.A.No. 2 of 2023 in O.S.No.1052 of 2017 is liable to be set aside and accordingly, set aside.

12. This Civil Revision Petition is, thus, allowed. Connected miscellaneous petition is closed. No costs.

20.12.2023

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Index:Yes/No

Speaking Order : Yes/No



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K.GOVINDARAJAN THILAKAVADI,J.

dpa

To

1.The Subordinate Court,
Thirumangalam.

ORDER MADE IN

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