



C.R.P.(MD).No.2104 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.2104 of 2018

and

C.M.P(MD) No.9280 of 2018

Vanitha Robert

... Petitioner/Petitioner/
Defendant

-vs-

1. Vinoo Austin
2. Ravi Austin

... Respondents/Respondents/
Plaintiffs

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 21.06.2018 made in I.A.No.285 of 2017 in O.S.No.121 of 2016 on the file of the I Additional District Court (PCR), Tiruchirapalli.

For Petitioner : Mr.A.Arumugam
for M/S.Ajmal Khan Associates

For Respondents : Mrs.J.Maria Roselin



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ORDER

The instant Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 21.06.2018 made in I.A.No.285 of 2017 in O.S.No.121 of 2016 on the file of the I Additional District Court (PCR), Tiruchirapalli.

2. The learned Senior Counsel appearing for the petitioner would vehemently contend that in respect of the succession among the Christians, there is no doctrine of joint family and the concept of undivided family property, whereas, in the plaint in respect of the second item of the property, the plaintiffs took a specific ground that though the property stands in the name of their mother, namely, Mrs.Sarala Austin, they took a specific defence that the property is a joint family property. The learned Senior Counsel would contend that such an argument is alien to the Christian succession. Therefore, he would submit that the very plaint is barred under law. In support of his case, the learned Senior Counsel has also relied upon the following judgements:



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- (i) 2016 SCC online Mad 12885 (S.Jesuraj vs.M.A.R Sathiyagu and three others),
- (ii) 2019 SCC Online Mad 28035 (Lourthunathan Vs.Pathinathan and others)
- (iii) 2014 (10) SCC 731 (Lalitha Theresa Sequeria (since died) by legal representatives Vs. Dolfya Pias Alias Adolphys Joseph Pais and another)

Where, it has been held that the joint family concept is alien to the Christianity Religion.

3. Per contra, the learned counsel appearing for the respondents would vehemently submit that, in their plaint, apart from the concept of joint family, they seriously challenged the very execution of the settlement deed and has contended that the mother qua the settlor was not hale and healthy and she was in her advanced age, and that there is serious doubt in respect of the very execution of the settlement. Therefore, she would submit that, when the very execution of settlement is under challenge, automatically, they are entitled to have their share in the item No.2 of the property. The learned counsel for the respondents has also relied upon the two judgments reported in **2002 0 Supreme (SC) 1259 (Saleem Bhai and others Vs. State of Maharashtra and others)** and **(2020) 17 (SCC) 260 (Shakti Bhog Food Industries Limited Vs.**



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Central Bank of India and another) and would vehemently submit that whenever an application is being considered under Order 7 Rule 11 of C.P.C, it is the duty of the Court to only see the plaint averments. This Court is in full agreement with the submissions made by the learned counsel for the respondents.

4. While perusing the paragraph No.18 of the plaint, apart from the other ground, the plaintiff has raised the very pertinent issue in respect of challenging the very execution of the settlement deed. Therefore, in such an event, this Court is of the view that the prayer sought for in respect of the item No.2 of the property cannot be held to be barred under law.

5. Therefore in view of the above discussion, this Court is of the view that the findings recorded by the Court below is liable to be confirmed.



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6. In the result, this Civil Revision Petition is **dismissed**. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The 1 Additional District Court (PCR),
Tiruchirapalli.



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C.KUMARAPPAN,J.

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