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C.R.P.(PD)No.3716 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.3716 of 2024 and
CMP.No.20160 of 2024

M/s.Sri Margadharshan Developers Pvt. Ltd.,
Represented by its Authorised Signatory,
Having office at Ram Lakan Chambers,
Suit 314, III Floor,
No.19/20, General Muthiah Street,
Sowcarpet, Chennai- 600 079.

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Petitioner

Versus

1. Mrs.Uma Maheswari
2. Mrs.Bhavaniammal
3. Mr.Jayaraj
4. Mr.Sathyaraj
5. The Special Officer,
Thimmavaram Panchayat,
Kattankalathur Panchayat Union,
Chengalpattu Taluk.
6. Mr.P.Azhagan
7. Mr.Vellaisamy
8. Mrs.Visalaktchi

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Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the impugned daily order dated 24.07.2023 passed in I.A.No.03 of 2021 in O.S.No.384 of 2019, on the file of the Principal District Judge, Chengalpet.



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For Respondents : Mr.S.Suriya
Additional Government Pleader'

ORDER

This civil revision petition challenges the order passed by the learned Additional District Judge, Kancheepuram at Chengalpet in I.A.No.3 of 2021 in O.S.No.384 of 2019 dated 24.07.2023.

2. The civil revision petitioner is the 4th defendant in the suit. O.S.No.384 of 2019 has been filed seeking for partition and separate possession.

3. The case of the 1st respondent/plaintiff is that she is the adopted daughter of one Balasubramania Mudaliar. She claimed that Balasubramania Mudaliar came across the property on account of the Settlement Deed, that it had been executed by one Dhanakotiammal. She stated that Balasubramania Mudaliar married the 1st defendant and did not have any children. Therefore, the said Balasubramania Mudaliar and the 1st defendant adopted the plaintiff as their daughter. She pleaded that she took care of said Balasubramaia Mudaliar and the 1st defendant.



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4. The Balasubramania Mudaliar died on 22.11.2012, leaving behind the 1st defendant and herself to succeed to the estate. She pleaded that after the death of her adoptive father, a person by name one Nityanandam poisoned the mind of the 1st defendant and she started behaving in an inimical and indifferent manner towards her. Finding, it is not possible to continue to live as a joint family along with the 1st defendant, she pleaded for amicable partition. That came to be refused. She pleaded that the 1st defendant, her adoptive mother, had alienated the property in favour of the 4th defendant, who was attempting to alienate the suit schedule mentioned property. Hence, the suit.

3. The 1st defendant entered appearance and pleaded that the story of adoption as pleaded by the plaintiff is a false one. She stated that it is a cock and bull story and that on the death of Balasubramania Mudaliar, she succeeded to the estate absolutely and therefore she is entitled to alienate the property in favour of the 4th defendant. She also pointed out that the plea of adoption is also false and is contrary to the provisions of the Hindu Adoption and Maintenance Act, 1956. She urged that in terms of Section 8 of the Hindu Succession Act, 1956, she is the only class I legal heir and therefore she succeeded to the estate. A similar plea was taken by the 4th defendant in its



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written statement.

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4. At that stage, the 4th defendant filed an application in I.A.No.3 of 2021, seeking to decide the issue of Court fees as a preliminary issue under Order XIV Rule 2 r/w. Section 12 (2) of the Tamil Nadu Court Fees and Court Valuation Act, 1955 (in short ' the TNCF Act').

5. It is his plea that as per the plaint, the plaintiff has conceded the value of the property is 30 crores. He urged the plaintiff is not in a possession of the property and it is the 4th defendant who is in possession, the suit should have been valued under Section 37 (1) of the TNCF Act and not under Section 37(2).

6. This application was resisted by the plaintiff stating that she had pleaded that she is in joint possession of the property along with her mother, the 1st defendant. She also pointed out that the possession of one co-owner is presumed to be the possession of the other and therefore, she is in joint possession and hence is entitled to value the suit under Section 37(2) of TNCF Act.

7. This application came to be allowed on 12.11.2021. The learned Trial



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Judge held that both the parties have to address the preliminary issue regarding the Court fee first and consequently allowed the petition.

8. Taking strength from this order, the 4th defendant filed CRP(PD) No.2551 of 2022. It sought for a direction to dispose of the preliminary issue in I.A.No.3 of 2021 in O.S.No.384 of 2019. This Court accepted the plea of the 4th defendant and on 12.08.2022 directed the learned Trial Judge to reopen the Interlocutory Order in I.A.No.3 of 2021 and render a finding within a period of two weeks from the date of receipt of a copy of the order.

9. The learned Trial Judge, after hearing the arguments, dismissed the application on 24.07.2023. Challenging the same, this Civil Revision Petition was presented to this Court.

10. Mr.T.M. Mano, made a representation to me that the Registry of the District Court in Chengalpat has refused to give a copy of this order. Therefore, I requested the learned Additional District Judge, the reason why the copy application had been returned. I further directed the learned District Judge to send a copy of the order in I.A.No.3 of 2021 dated 24.07.2023 along with a report.



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WEB COPY 11. The learned Additional District Judge submitted a report on 14.08.2024 stating that, due to heavy pressure of work and lot of pendency of cases, inadvertently the copy application filed by the 4th defendant had been returned. She submitted a photostat copy of the order along with the report. Thereafter, a certified copy has also been issued to the 4th defendant. Mr.T.M.Mano submitted copy of the said order along with the revision.

12. I heard Mr.T.M.Mano on the merits of the revision.

13. Mr.Mano urges that the Trial Court erred in dismissing the application, when the plaintiff has admitted that the 4th defendant and his purchasers are in possession of the property. He further points out that when possession of the 4th defendant is conceded, then the Court should have come to the conclusion that the plaintiff is not in possession and therefore the plaint should have been valued under Section 37 (1) and not under Section 37(2) of TNCF Act. He relies upon the Judgment of this Court in ***S.N.S.Sukumaran and Ors. Vs. C.Thangamuthu & Ors, (C.R.P.(PD) Nos.3620 of 2007 etc., batch dated 27.09.2012).***



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14. I have carefully considered the submissions of Mr. Mano.

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15. In matters relating to Court fee and Jurisdiction, the averments made in the plaint alone matter. A perusal of the plaint reveals that the plaintiff in paragraph 14 of the plaint has stated that “*It is not possible for the plaintiff to be in joint possession any longer.*” This implies that the plaintiff pleads that she is in joint possession of the property. When the plaintiff pleads that she is also a legal heir of Mr. Balasubramani Mudaliar, along with the 1st defendant and when the 1st defendant has stated that she has alienated all the properties in favour of the 4th defendant, the Court still has to decide whether the plaintiff is a legal heir of the said Balasubramania Mudaliar. This is because the possession of one co-owner is deemed to be the possession of other Co-owner. In case, the plaintiff did not have a plea on joint possession, I would have certainly agreed with Mr. Mano and had directed the Court to value the suit under Section 37 (1) of TNCF Act. Since the plea of joint possession is available and as the principle of law as stated above is settled, I am not in a position to agree with the plea of Mr. Mano.

16. The Judgement of Division Bench also does not assist Mr. Mano on account of the fact that, in paragraph 30(3) of the said Judgment, a



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direction has been given that the Court should come to the conclusion on the basis of the pleadings of the parties. The pleadings placed before me states that the plaintiff is in joint possession. Hence, I do not find any error in the order passed by the learned Additional District Judge at Kancheepuram in the impugned order.

17. At this stage, Mr.Mano submits that the 1st defendant is no more and the matter is being adjourned for the purpose of taking steps. When the plaint itself reveals that the 1st defendant and the said Balasubramania Mudaliar did not have any children and they had adopted the plaintiff as the legal heir, the question of adjourning the matter for taking steps does not arise.

18.Furthermore the 1st defendant had alienated her holdings in favour of the 4th defendant. Under Section 2 (11) of the Code of Civil Procedure, a legal heir need not be a legal representative. All legal heirs are legal representatives, but the reverse is not true. By virtue of the purchase made by the 4th defendant the properties owned by the 1st defendant, the 4th defendant automatically becomes the legal representative of the deceased 1st defendant. Therefore, the learned Trial Judge shall receive a Memo from the 4th defendant stating that it has purchased all the properties from the 1st defendant and record



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the 4th defendant as the legal representative of the 1st defendant and proceed with the suit.

19.As the 4th defendant had made vital investments in the suit and also alienated the properties in favour of several 3rd parties and since the plaintiff herself is a senior citizen, the suit requires to be disposed of as expeditiously as possible.

20.I am aware of the fact that the learned Additional District Judge is burdened with cases in Chengalpet. She is requested to give priority to this case considering that vital rights of several innocent 3rd parties are involved. The learned Additional District Judge, Kancheepuram at Chengalpat is directed to dispose the suit within a period of **six months** from the date of receipt of a copy of this order.

With the above directions on the legal representatives of the deceased 1st defendant, this civil revision petition stands dismissed. No costs.

12.12.2024

Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

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LAKSHMINARAYANAN, J

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To

The Additional District Judge,
Kancheepuram, Chengalpat District.

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