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C.R.P.No.435 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.03.2024

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.No.435 of 2022

and

C.M.P.Nos.2222 & 6892 of 2022

1. Varalakshmi
W/o late K.Udhayabanu

2. U.Bharanidharan,
S/o late K.Udhayabanu

... Petitioners

vs.

1. V.Baskaran
S/o Varadharajan

2. Balaji,
S/o Udaya Bhanu

3. Vijaya Nirmala,
D/o Varadharajan

4. Manjula,
W/o Venkaesan

5. Mohandoss,
S/o Varadharajan

... Respondents

Prayer in CRP : The Civil Revision Petition filed under Article 227 of the Constitution of India to reject the plaint in O.S.No.28 of 2020 on the



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file of the Additional Subordinate Court at Chengalpattu.

For Petitioners : Mr.R.Munusamy
for Ms.R.Lavanya

For Respondents : Mr.S.Abu Backer Sidhic
for R1
No appearance for R2 to R5

ORDER

This Civil Revision Petition has been filed to reject the plaint in O.S.No.28 of 2020 on the file of the Additional Subordinate Court at Chengalpattu.

2. The brief facts of the case of the petitioner is as follows:

(i) The 1st petitioner is the wife of the deceased K.Udayabanu and the 2nd petitioner is the son. According to the petitioner, the suit property belonged to her husband K.Udayabanu who was employed as Conductor in the Metropolitan Transport Corporation. They got married on 12.03.1984. The property was purchased by Udayabanu on 06.10.1994 after availing loan from Housing Development Finance Corporation Limited and he constructed a building thereon and suddenly died on 07.12.1996 due to cardiac arrest. The petitioners are the legal heirs of the deceased K.Udayabanu.



(ii) The 1st petitioners' father Mr.Varadharajan died on 17.08.2000 and her mother died in 1990. The respondents V.Baskar and V.Mohandass are the sons of Varadharajan and the 1st petitioner, Vijaya Nirmala and Manjula are the daughters of the said Varadharajan and they the surviving legals of Mr.Varadharajan. Upon the death of Varadharajan, one of his daughters, namely Manjula filed a suit in O.S.No.143 of 2000 on the file of Principal Sub Court, Chengalpattu, for partition and separate possession of her due share in the joint family properties namely one house and one agricultural land. The 1st and 2nd respondents resisted her suit claim stating that there is no joint family in existence and also projected a Will dated 29.04.1994 that was allegedly executed by Varadharajan thereby bequeathing his properties to his two sons alone. But they failed to prove the Will in the manner known to law. The trial Court decreed the suit on 23.09.2008 granting 1/4th share in item No.1 property and 3/10th share in item No.2 of the suit property. Challenging the same, the two sons of Varadharajan preferred an appeal before the Principal District and Sessions Court, Chengalpattu in A.S.No.43 of 2009. The said appeal was dismissed on 21.09.2010. Thereafter, Second Appeal in S.A.No.76 of 2011 was filed before this Court and this Court vide judgment 19.03.2012 disposed of the Second Appeal, modifying the



preliminary decree in respect of quantum of share of the parties in the suit property. After disposal of the second appeal, the sons of Varadharajan, settled the claim of the plaintiff therein viz., Manjula and they refused to settle the petitioner's share and hence, the petitioner filed I.A.No.424 of 2012 before the trial Court for passing final decree and the same is pending. It was not the case of any parties to the said suit that the said suit property is a joint family property of Varadharajan. After twenty years from the date of death of Varadharajan and after 2 years of filing the suit for partition in O.S.No.143 of 2020, the 1st respondent herein has filed the impugned suit stating that the suit property is the joint family property of Varadharajan who purchased the same in the name of the petitioner's husband K.Udayabanu and that Udayabanu was a joint family member and sought for the relief of partition and separate possession of his alleged 1/5th share in the property. Hence, the present civil revision petition.

3. Heard the learned counsel for the petitioner and the learned counsel appearing for the 1st respondent. Though notice was served on 2nd to 5th respondents, no one had entered appearance.



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4. At the outset, it has to be pointed out that Varadharajan died on 17.08.2000 and immediately after his demise, one of his daughter filed a suit for partition against her brothers and sisters in respect of their family properties and in the said suit, none of the parties has made any claim over the property that stands in the name of K.Udhayabanu. Twenty years after the death of Varadharajan and after the disposal of the earlier suit for partition (O.S.No.143/2000), the 1st respondent had filed the present suit in O.S.No.28 of 2020, which cannot be countenanced. Further, K.Udhayabanu was not a coparcener or joint family member of Varadharajan and thus, the property which stands in the name of K.Udayabanu cannot be construed as a joint family property.

5. Even assuming that the suit property is a joint family property, the said plea of the 1st respondent cannot be taken now, since the earlier suit for partition (O.S.No.143/2000) had already attained finality and nowhere it was pleaded by the family members that the suit property is one of joint family properties. Further, it is settled law that father, sons and daughters are alone coparceners of a joint family and no outside member of a family would be construed as coparcener.



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6. In view of the above discussion, this Court is of the opinion that the plaint filed in O.S.No.28 of 2020 is liable to be rejected. Accordingly, the plaint filed in O.S.No.28 of 2020 on the file of the Additional Subordinate Court, Chengalpattu, is hereby rejected. The Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No
Speaking /Non speaking order
vsi

To

The Additional Subordinate Court
at Chengalpattu.



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J.NISHA BANU, J.

vsi

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