



WEB COPY



C.R.P.(PD)No.448 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.448 of 2023

and

C.M.P.No.3722 of 2023

1.Nagarathinam

2.Balamurugan

3.Kalyani

.. Petitioners

Vs.

1.Padmavathi

2.Nagarathinam

3.Selvakumar

4.Shenbagam

5.Shanmugam

.. Respondents

Prayer : The Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order passed by the learned District Munsif, Udumalpet, dated 14.11.2022, in I.A.No.648 of 2022 in O.S.No.137 of 2004 by permitting the petitioners to file an additional written statement.



WEB COPY



C.R.P.(PD)No.448 of 2023

For Petitioners : Mr.N.Thiagarajan

For R1 : Mr.S.Prabu

For RR2, 4 and 5 : Not Ready in Notice, No Appearance

For R3 : No Appearance

ORDER

The present Civil Revision Petition arises out of the order passed by the learned District Munsif at Udumalpet in I.A.No.648 of 2022 in O.S.No.137 of 2004, dated 14.11.2022, dismissing the application filed under Order VIII Rule 9 of the Code of Civil Procedure.

2. For the sake of convenience, the parties will be referred to as per their rank in the suit.

3. O.S.No.342 of 2000 was presented before the learned Sub Court at Udumalpet seeking relief of partition and separate possession by the 1st respondent herein. This suit due to enhancement of pecuniary jurisdiction stood transferred to the file of the learned District Munsif at Udumalpet and was re-numbered as O.S.No.137 of 2004.



C.R.P.(PD)No.448 of 2023

4. During the course of trial, defendant Nos.1 to 3 expired constraining the plaintiff to bring on record their legal representatives and array them as defendant Nos.4 to 10. After the defendants were impleaded, they presented an additional written statement.

5. When the proof affidavit had been filed by the plaintiff, the defendants stated that they came to know that a suit had been filed subsequently in O.S.No.60 of 2008 by defendant Nos.1 to 3 praying for a declaration that they are the legal heirs of the deceased Palani Gounder. The plaintiff/Padmavathi was the 3rd defendant therein, and the suit in O.S.No.60 of 2008 came to be dismissed on 21.10.2018. Pleading that the judgment and decree in this suit in O.S.No.60 of 2008 as well as in an other suit in O.S.No.34 of 2014 are the subsequent events which have to be brought on record before the Court, an application was moved for filing of an additional written statement.

6. The petitioners, who are defendant Nos.4 to 6, also pleaded that the 1st defendant had executed a "WILL" on 26.01.2008, and she passed away on 28.01.2009 bequeathing the property in favour of the civil revision petitioners.



C.R.P.(PD)No.448 of 2023

7. In order to bring forth these events before the Court, an application was moved in the year 2022 to receive an additional written statement. This application was resisted by the plaintiff stating that the entire idea of defendant Nos.4 to 6 is only to drag on the proceedings and the petition itself had been filed after the lapse of 13 years. She would state that the ground on which the suit in O.S.No.60 of 2008 was dismissed was because when Class I heirs are available, the question of declaration of Class II heirs does not arise. On these pleas and the other matters pleaded in the counter, she sought dismissal of the application.

8. The learned District Munsif came to a clear and categorical conclusion that on 06.04.2005, the petitioners filed a memo stating that they are adopting the written statement of the 2nd defendant. Subsequently, they moved an application under Order VIII Rule 9 of the Code of Civil Procedure which was allowed on 07.06.2007, and yet again filed a further petition under Order VIII Rule 9 of the Code of Civil Procedure in the year 2007 which came to be allowed on 10.02.2011. Though an additional written statement was filed in the year 2011, there was no plea regarding the "WILL" that had been executed in the year 2008. He would therefore come



C.R.P.(PD)No.448 of 2023

to the conclusion that the entire idea of the petitioners was only to drag on the proceedings and deny the plaintiff of any benefit of a decree despite the lapse of 22 years.

9. As against the order of dismissal, the present revision has been presented before this Court.

10. Heard Mr.N.Thiagarajan, appearing on behalf of the petitioners and Mr.S.Prabu, appearing on behalf of the 1st respondent.

11. Mr.N.Thiagarajan would submit that being subsequent events after the presentation of the plaint, the petitioners are entitled to bring those facts on record before the Court. The gist of his argument is that the fact that a decree had been passed pending the litigation would have some effect on the pending suit, therefore, the defendants were entitled to plead those facts and to file the records to substantiate the same.

12. Mr.S.Prabu would state that the partition suit is pending for the past 22 years and the entire idea of defendant Nos.4 to 10 is to see that the



C.R.P.(PD)No.448 of 2023

suit does not reach its logical conclusion. He would state that none of the pleadings that are sought to be adduced in additional statement are relevant to the facts of this case.

13. I have carefully considered the arguments on either side and I have carefully gone through the records available.

14. It is a settled position of law that the cause of action for a suit commences on the date of presentation of the plaint. The Court would have to decide whether the plaintiff is entitled to a decree of partition when she presented the plaint in O.S.No.342 of 2000, just about 25 years ago. The fact that there are subsequent events can certainly be brought to the light of the Court if those subsequent events would point out to either the plaintiff having lost her entire right over the property or if there is a denudation of her right, having agreed to a lesser extent of the property.

15. It is not in dispute that the civil revision petitioners/defendant Nos.4 to 6 had adopted the written statement that had been filed by the 2nd defendant. In addition, they had also got the benefit of filing additional



C.R.P.(PD)No.448 of 2023

written statements on two previous occasions. When the course of trial was progressing and the plaintiff has closed her side of evidence, this application has been filed in order to set the clock back by 13 years. That is to say, when the civil revision petitioners were aware of the death of Arukathal @ Arukaniyammal as early as in the year 2009, there is absolutely no explanation in the affidavit as to why they waited for a period of 13 years in order to project a "WILL".

16. The learned District Munsif has given clear and cogent reasons in the order as to why he is not accepting the petition. I do not find any reason to differ from the same. Accordingly, the Civil Revision Petition stands dismissed with costs of Rs.10,000/- (Rupees Ten Thousand only). The learned District Munsif is directed to ensure that the suit, which is pending for the past 22 years, is disposed of on or before 31.12.2024.

12.07.2024

mkn2

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No



WEB COPY



C.R.P.(PD)No.448 of 2023

V. LAKSHMINARAYANAN, J.

mkn2

To

The learned District Munsif,
Udumalpet

C.R.P.(PD)No.448 of 2023

and

C.M.P.No.3722 of 2023

12.07.2024