



CRP No.373 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP No.373 of 2024

P.Shankar

... Petitioner

Vs.

1.AS.Harini

2.Minor A.S.Sathya

3.A.Sulochana

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order in IA No.1 of 2023 in OS No.522 of 2022 dated 18.12.2023 on the file of the I Additional District and Sessions Judge's Court, Tiruppur and allow the Revision.

For Petitioner

: Mr.C.R.Prasanan



CRP No.373 of 2024

ORDER

The civil revision petition is filed to set aside the fair and decreetal order in IA No.1 of 2023 in OS No.522 of 2022 dated 18.12.2023 on the file of the I Additional District and Sessions Judge's Court, Tiruppur and allow the Revision.

2. The revision petitioner is the fourth defendant and the respondents are plaintiffs in OS No.522 of 2022 on the file of the learned Principal District and Sessions Judge at Tirupur. The plaintiffs filed the suit against the defendants seeking partition. The petitioner/fourth defendant has filed an application in IA No.1 of 2023 to reject the plaint. The trial court, by order dated 18.12.2023 had dismissed the application. Challenging the said order, the petitioner has filed the present civil revision petition.

3. Learned counsel for the petitioner submitted that the only contention is that the Will dated 03.11.1986 is admitted by the plaintiffs/respondents. In the Will, it is clearly mentioned that after the life



CRP No.373 of 2024

estate, it will go to the male legal heirs. Under these circumstances, females/plaintiffs could not claim any share over the property. Therefore, the suit is not maintainable and there is no cause of action and the suit has to be rejected. The trial court failed to consider the said fact. Therefore, seeking to allow the Revision.

4. Heard the learned counsel for the petitioner and perused the materials available on record.

5. The revision petitioner is the fourth defendant and the respondents are plaintiffs in OS No.522 of 2022 on the file of the learned Principal District and Sessions Judge at Tirupur. The plaintiffs have filed the suit against the defendants seeking partition. Further, on going through the averments in the plaint, in paragraph No.6, the plaintiffs have not disputed the Will dated 03.11.1986. The only contention is that Will has been executed prior to the Hindu Succession (Tamil Nadu Amendment) Act, 1/1990. Further, the words in the Will still includes females. Therefore, it



CRP No.373 of 2024

has to be decided by the trial court. Paragraph 6 of the plaint averments runs as follows:

The plaintiffs being legal heirs of the 1st defendant and though they are female members of the family, they are also being the legal heirs they are entitled to have share in the property it is admitted that, varisu means not only male heirs but female heirs also. Hence the plaintiffs 1 and 2 are entitled to half share in the properties as granddaughters of Chinniya Gounder.

6. Under these circumstances, it has to be adjudicated by the trial court. The Will has to be interpreted by letting evidence and also by considering the nature of the property and by examining the property after letting evidence. Therefore, the argument made by the learned counsel for the petitioner is not a acceptable one. There is no ground to interfere with the impugned order. There is no infirmity in the order passed by the trial court. There is no merit in the Revision. Hence, the civil revision petition is dismissed. The petitioner is at liberty to raise all the defense before the



CRP No.373 of 2024

trial court. There shall be no order as to costs. Consequently, CMP No.1748 of 2024 is closed.

28.02.2024

Index: Yes/No
Internet: Yes/No
mrn

To
The I Additional District and Sessions Judge's Court, Tiruppur



WEB COPY



CRP No.373 of 2024

V.SIVAGNANAM, J.

mm

CRP No.373 of 2024

28.02.2024