



C.R.P.Nos.458 and 476 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.Nos.458 and 476 of 2023
and C.M.P.No.3933 of 2023

1.B.Ratish
2.Minor B.Sandeesh ... Petitioners in both the CRPs

-Vs-

1.Pushpavathi
2.P.Nachimuthugounder
3.N.Balasubramaniam ... Respondents in both the CRPs

Prayer in CRP 458 of 2023: Civil Revision Petition under Article 227 of the Constitution of India to set aside the order dated 07.03.2023 passed in I.A.SR.No.1683 of 2023 in O.S.No.185 of 2008 by the learned Additional Sub Judge, Tiruppur and allow the application for impleading by allowing this CRP.

Prayer in CRP 476 of 2023: Civil Revision Petition under Article 227 of the Constitution of India to set aside the order dated 07.03.2023 passed in I.A.SR.No.1684 of 2023 in O.S.No.185 of 2008 by the learned Additional Sub Judge, Tiruppur and allow the application for impleading by allowing this CRP.

In both C.R.Ps

For Petitioners : Mr.S.S.Swaminathan
For Respondents : Ms.S.Mathumitha
for Mr.V.Nicholas - for R1
Mr.B.Bharathkumar - for R2
R3 - Served, No appearance



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COMMON ORDER

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These Civil Revision Petitions arise against the order passed by the learned Additional Subordinate Judge at Tiruppur in I.A.SR.Nos.1683 and 1684 of 2023 in O.S.185 of 2008 dated 07.02.2023. Since both the revisions arise out of a common order passed by the learned Additional Subordinate Judge in the same suit, both are clubbed together and are disposed of by this common order.

2. O.S.No.185 of 2008 is a suit for partition and separate possession filed by the daughter as against her father and brother. In this suit, two applications were filed by the Civil Revision Petitioners in the aforesaid SR numbers. I.A.SR.No.1684 of 2023 is the substantive application and hence that is taken up as the main case. This is an application filed to implead one B.Ratish and Minor B.Sandheesh as party defendants to the suit. There is no dispute that they are the sons of one S.Balasubramanian who is in turn the son of one Nachimuthu Gounder. Pushpavathi, the first respondent herein, Nachimuthu Gounder and N.Balasubramanian belong to one family. Pushpavathi already initiated O.S.No.185 of 2008 for the aforesaid relief. While this suit was pending, the children of N.Balasubramanian viz., the civil revision petitioners presented O.S.No.24 of 2019 on the file of the Additional District Judge at Tiruppur for the very same relief.

3. In this second suit viz., O.S.No.24 of 2019, summons were issued to the defendants. The defendants entered appearance and they informed the Court that



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already a suit for the same relief is pending for the past 1½ decades before the Subordinate Judge at Tiruppur. They would further represent that an exparte preliminary decree came to be passed on 25.01.2017. Taking this into consideration, the application filed to implead the civil revision petitioners came to be dismissed on the ground that, as the father is alive the petitioners do not have a right in the property.

4. The proposition when the father is alive the children do not have a right in the property would hold correct in case the property is a self-acquired property of the father. If it is ancestral property of the father, the civil revision petitioners being the children of N.Balasubramanian would get the right by birth. Whether it is self-acquired property or ancestral property can be gone into only at the time of trial. Needless to point out that in case the Court comes to a conclusion that it is a self acquired property of N.Balasubramanian, the civil revision petitioners will not have a right. On the contra, if the Court were to come to the conclusion that they are ancestral properties, not only the civil revision petitioners but also the first respondent before me Pushpavathi will have a right over the same. This is by virtue of the amendment to the Hindu Succession Act made by the Parliament in the year 2005.

5. Insofar as the exparte decree is concerned, it is said to have been set aside. It has been recorded in C.R.P.No.4780 of 2023 that the order setting



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N.Balasubramanian, the father of the petitioners, exparte has been set aside and a further direction has been given to try O.S.No.185 of 2008 along with O.S.No.24 of 2019. In the light of the order passed by this Court in C.R.P.No.4780 of 2023 and since the petitioners claim that it is the ancestral property of Nachimuthu Gounder, they are, by virtue of the fact that their relationship is not in dispute, entitled to be impleaded in the suit.

6. Consequently, both these civil revision petitions are allowed. No costs. Consequently, connected miscellaneous petition is closed. The orders passed by the learned Subordinate Judge is set aside. The petitioners herein shall be impleaded as defendants 3 and 4 to the suit. One of the newly impleaded defendant being a minor, he shall be represented by his mother and natural Tmt.B.Gomathi. The learned Principal District Judge is directed to abide by the conditions imposed by this Court in C.R.P.No.4780 of 2023 and try O.S.No.185 of 2008 now pending on the file of the Subordinate Judge at Tiruppur along with O.S.No.24 of 2019 pending on his file and dispose of the same as expeditiously as possible taking into consideration that the daughter has been claiming her right and has been knocking the doors of the Court for the past 10 years.

18.06.2024

Index : Yes/No
Neutral Citation : Yes/No
KST

To



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Additional Sub Judge, Tiruppur

V. LAKSHMINARAYANAN, J.
KST

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