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CRP No. 1040 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2024

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THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

CRP No. 1040 of 2023
and
C.M.P. No. 7462 of 2023

1.K.Velusamy
2.V.Arulmurugan
3.V.Sridevi ... Petitioners

Vs.

V.Radhika ... Respondent

PRAYER: Petition filed under Article 227 of the Constitution of India to set aside the fair and final order dated 10.10.2022 made in I.A.No.165 of 2018 in O.S.No.259 of 2018 on the file of the Sub Court, Paramathy.

For Petitioner : Mr.T.Murugamanickam,
Senior Counsel, for
Ms.Zeenath Begum

For Respondent : Mr.S.Ramesh for
Mr.T.Balaji

ORDER

The defendants are the revision petitioners. The suit is one for partition and separate possession. The plaintiff is a daughter of the first defendant.



2. The plaintiff pleaded that the suit schedule mentioned properties are joint family properties and that, she is entitled to 1/4th share in the same.

3. The first defendant filed a written statement admitting to the fact that the properties were ancestral properties. Subsequently, he filed an application for amendment. He would plead that this application was received as I.A.No.714 of 2015 on the file of the Sub Court at Namakkal and thereafter on transfer to the file of the Sub Court at Paramathi, it is renumbered as I.A.No.165 of 2018. In this amendment application, he would plead that the properties in S.No.170/1 and 171/2 of Edayar Melmugam Village, Paramathi Taluk, Namakkal District are the self acquisitions of his father, Karuppannan, and himself, and the properties situated in S.No.114/1, 114/4B, 114/4C, 114/5C, 114/5D, 114/5E, 116/2, 188/1B1 fell to the share of Karuppannan, his father by virtue of a partition deed that had been entered into between Karuppannan, his father and himself on 25.10.1971. He would plead that by virtue of this partition, his father, Karuppannan became the absolute owner of the property. He would further plead that a day before his father went to meet his maker, he executed a "WILL" on 26.08.1981 bequeathing his assets in favour of the first defendant.

4. The gist of this plea is that the aforesaid properties are the self



acquisitions of the first defendant and are not capable of being partitioned at the instance of his daughter. For the sake of understanding the specific plea is extracted hereunder:

“பிரதில் சொத்து விபரத்தில் கண்டுள்ள சொத்துக்கள் இந்தப் பிரதிவாதியின் பொதுக் குடும்பத்துக்கு பாத்தியப்பட்டது என்பது உண்மை.”

5. After receipt of a counter, the learned Trial Judge proceeded to partly allowed the amendment application. He permitted the first defendant to incorporate the pleadings that have been set forth above, but dismissed the petition seeking withdrawal of the plea that all the properties are not ancestral properties.

6. Aggrieved by the same, the present civil revision petition has been filed.

7. I have heard Mr.T.Murugamanickam for Ms.Zeenath Begum and Mr.S.Ramesh for Mr.T.Balaji for the respective parties.

8. The narration of the aforesaid facts would show that the first defendant also agrees that the property is a joint family property, which was enjoyed in common between Karuppannan, the father of the first defendant and the first defendant. The joint family properties were partitioned in the



year 1971 by way of a registered document.

9. Insofar as two items are concerned, Karuppannan and Velusamy, the first defendant purchased the property in the year 1976. The first defendant would plead that by oversight he pleaded that all the properties are joint family properties. The very fact that the father and his son have entered into a partition deed in the year 1971 would show that the joint family consisting of Karuppannan and Velusamy possessed all the properties, other than the properties situated in S.No.170/1 and S.No.171/2, and were enjoyed in common as ancestral properties.

10. The learned Trial Judge has rightly allowed the application permitting the plaintiff to clarify the plea that has been raised in paragraph 3 of the written statement. The burden to prove that the property purchased on 30.04.1976 are self acquisitions and that Karuppannan had executed a will bequeathing his properties in favour of his son, Velusamy on 26.08.1981 continues to be on him.

11. The refusal to delete the aforesaid sentence does not make any difference to the defence that has been raised by the first defendant. It is always open to the first defendant at the time of trial to prove that the



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properties, which he has obtained by virtue of the “WILL” fell to the share of his father and thereafter comes to him exclusively.

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12. Similarly, the first defendant can always prove that the properties situated in S.No.170/1 and S.No.171/2 are his exclusive properties. The fact that a line exists in the written statement does not prevent the first defendant to let in any evidence to show that there are different sources of title to the properties nor does it prevent the Court from probing into the said issue.

13. The learned Trial Judge has carefully analysed the position of law and dismissed the application in part. I do not find any necessity to interfere with the order. Accordingly, this civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

25.09.2024

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Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

To

1. The Sub Court, Pararmathy.



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V.LAKSHMINARAYANAN, J.,

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