



WEB COPY

CRP.No.1015 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No.1015 of 2022

- 1.Srinivasan
- 2.Muniraj
- 3.Chinnamma @ Vasantha
- 4.Gowramma
- 5.Meenatchi
- 6.Shivasankar
- 7.Neela
- 8.Thayamma @ Muniyammal
- 9.Suseelamma

...Petitioners

Vs.

- 1.Achammal
- 2.Chenna Krishnan

...Respondents

Prayer: Civil Revision Petition filed under Section 227 of the Constitution of India, against the rejection order dated 01.02.2022 passed by the learned Principal Sub-ordinate Judge, Hosur in unnumbered O.S.Sr.No.957 of 2022 and to number the plaint within a time frame.

For Petitioners : Mr.R.Jayaprakash

For Respondents : Mr.K.Thiruvengadam



ORDER

The order under challenge in this revision is an order wholly without jurisdiction where, the learned Judge chose to reject the plaint even without numbering the same by rendering findings on vital issues that would arise after trial in the suit.

2.A suit for partition was laid by the petitioners, contending that the suit properties are ancestral properties belonging to the family of one Munusamy Achari and Kandhachari. The plaintiffs are the sons, daughters and widow of Munusamy Achari and Kandhachari. The defendants are alienees. In the plaint, it was averred that the properties belonged to the joint family and the sale made by Munusamy Achari and Kandhachari in the year 1982 is not valid and binding on the plaintiffs, who are entitled to a share as coparceners. The plaintiffs had claimed that they are entitled to 54/72 shares, since the daughters would also be entitled to equal share along with the sons, in view of the Act 39 of 2005.

3.The learned Trial Judge returned the plaint on 30.11.2021 raising the following queries:-



1) *Value of the Suit Schedule property correctly to be maintained.*

2) *E.C. as on date of the suit schedule properties to be filed.*

3) *Death Certificates and LR certificates of Munusamy Achari & Kanda Achari to be filed.*

4) *Documents to be need to show that suit property is the Ancestor properties of the plaintiffs.*

5) *Document to be produced to show the possession of the plaintiffs from 1982 to till date.*

6) *How the suit is maintainable against the P3, 4, 5, 7, 8, 9 Explained.*

Hence Retd.

The one month.

4.The plaint was resubmitted with the following endorsements:-

1) *Returned S.No.1 and 2 Produced*

2) *Death certificate of Munisamy Achari produced, it is reported Kandha Achari died long back unable to procure, there is no discrimination regarding legal representation's.*

3) *The alleged suit property sale deed was prior to UDR survey scheme. Hence, UDR 'A' Register reflects Defendants name, if court deems fit at the time of trial, we will mark copy of SLR with leave at this Hon'ble Court.*

4) *The plaintiffs are in actual and physical possession.*



5) Returned No.6 is bind by Act 39 of 2005 Hindu Succession Act. Hence suit is maintainable against P3 to P5 and P7 to P9. Hence re-submitted with returns complied.

5.Again on 20.01.2022, the learned Sub-ordinate Judge returned the plaint with the following endorsement.

- 1) Previous returned dt. 30/11/2021 not complied.*
 - 2) E.C to be added in the list of Documents and C.F to be paid.*
- Hence ret'd.*
- Time One Month.*

6.The same was again represented on 28.01.2022. On the same day, the learned Sub-ordinate Judge directed the matter to be called on the open Court. She had heard the counsel on the virtual mode and has passed an order, rejecting the plaint on the ground that the plaintiffs 3, 4, 5 & 7 who are daughters are not entitled to equal share in view of the Act, 39 of 2005, since according to the learned Judge, the daughters would derive equal right only from the year 2006, therefore, they are not entitled to equal share. The learned Trial Judge also found that there is no proof to the effect that the suit properties are ancestral properties. It is this order of the learned Sub-ordinate Judge is under challenge in this revision.



7.This Court had in ***Selvaraj Vs. Koodankulam Nuclear Power Plant India Ltd.***, reported in (2021) 3 LW 677 laid down the guidelines as to when and how a plaint should be returned. This order of the learned Judge is in complete violation of the directions issued by this Court in the said judgment. In fact, the conclusion of the learned Sub-ordinate Judge that the daughters do not have equal share, militates against the judgment of the Hon'ble Supreme Court in ***Vineeta Sharma Vs. Rakesh Sharma and Others*** reported in (2020) 9 SCC 1 wherein, it was held daughters would be entitled to equal share immaterial of the date of the death of the father.

8.It is seen that an explanation was called for from the learned Trial Judge by this Court when the revision was admitted and notice was issued to the respondents. The learned Judge has offered an explanation and the same is directed to be placed before the concerned Portfolio Judge of Krishnagiri District for appropriate action on the administrative side. Since I have concluded that the order under challenge is in complete violation of the directions issued by this Court in ***Selvaraj Vs. Koodankulam Nuclear Power Plant India Ltd.***, the order under revision have to be necessarily set aside and the same is set aside.



9. In view of the same, this Civil Revision Petition is **allowed**. The learned Sub-ordinate Judge is directed to number the suit and proceed with it in accordance with law. No costs.

18.01.2024

kkn

Internet: Yes

Index: No

Speaking

Neutral Citation : No

NOTE: Registry is directed to place the report of the Learned Subordinate Judge before the portfolio judge of Krishnagiri District for appropriate action.



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To:-

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The Principal Sub-ordinate Court,
Hosur.



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R.SUBRAMANIAN, J.

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