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C.R.P.(PD).No.1505 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).No.1505 of 2024 &
C.M.P.No.8134 of 2024

Rajagopal

... Petitioner

-Versus-

1.Radhakrishnan
2.Chandrakleha
3.Vasanth
4.Sakunthala
5.Devanathan
6.Gnanavel
7.Radhakrishnan

... Respondents

Civil Revision Petition under Article 227 of the Constitution of India against the fair and decretal order dated 13.02.2024 passed in I.A.No.1 of 2023 in O.S.No.108 of 2016 on the file of the Sub Judge, Panruti.

For Petitioner : Mr.K.Sasindran

ORDER

The plaintiff presented O.S.No.108 of 2016 on the file of the Subordinate Court at Panruti, seeking partition and separate possession of his 1/4th share.



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2. Pending the litigation, according to the plaintiff, the third and fourth defendants had executed a release deed in his favour and thereby his claim arose from 1/4th share to 3/4th share. The first defendant claims that in an oral family arrangement between the family members, the third and fourth defendants agreed that their share in the property be given to the civil revision petitioner/first defendant.

3. To bring to the notice of the court of the release deed executed by the third and fourth defendants in favour of the plaintiff, an application for amendment was presented in I.A.No.1 of 2023. The said application was allowed, against which the present revision.

4. Learned counsel for the petitioner would contend that as the third and fourth defendants have already relinquished their claim in favour of the first defendant, they did not have the right to execute the release deed in favour of the plaintiff and therefore, the revision must be allowed and the order granting the amendment must be dismissed.

5. I have heard the arguments on either side and I have gone through the



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records and the order impugned.

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6. The test to be applied while dealing with the application for amendment of plaint is

- (a) whether the amendment changes the cause of action in the suit;
- (b) whether the frame of the suit is changed; or
- (c) whether it is barred by limitation.

7. By virtue of allowing I.A.No.1 of 2023, the suit continues to be one for partition. The plaintiff would necessarily have to prove that the third and fourth defendants have alienated their shares in his favour. In case, the plaintiff fails to prove it, then the alleged release deed would not come to his rescue. All these matters have to be gone into only at the time of trial.

8. The plaintiff is entitled to bring to the notice of the court any subsequent events that take place which will affect his or her rights in the suit. The same has been done in the present case. Whether Radhakrishnan is entitled to a larger share or whether Rajagopal had already acquired that share before the presentation of the plaint are matters which have to be tried during the



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course of the trial.

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9. I do not find any reason to interfere with the order of the learned Subordinate Judge at Panruti. Accordingly, this civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order



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To

The Subordinate Judge at Panruti.



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V.LAKSHMINARAYANAN, J.

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