



C.R.P.(PD).No.1471 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).No.1471 of 2024 &
C.M.P.No.7913 of 2024

1.Minor I.Ranganayagi
2.Minor I.Renugadevi
(Both the minors are represented
by next friend/father
G.M.Iyyappakumar)

... Petitioners

-Versus-

P.Srikanth

... Respondent

Civil Miscellaneous Petition filed under Article 227 of the Constitution of India to set aside the order passed by the Additional District Court (FTC) Vellore on 26.02.2024 in I.A.No.3 of 2024 in O.S.No.72 of 2022.

For Petitioners : Mrs.K.M.Valsala Kumari

For Respondent : Mr.Prakash Goklany

ORDER

The present civil revision petition arises against the order passed by the learned Additional District Judge cum Fast Track Court at Vellore in I.A.No.3



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of 2024 in O.S.No.72 of 2022.

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2. O.S.No.72 of 2022 is a suit filed on 01.06.2022 for a declaration of title of the plaintiffs over the suit schedule mentioned property and for consequential relief of recovery of possession.

3. The claim of the plaintiffs is that the property originally belonged to one Sheshathiri, who subsequently sold the property to one V.M.Purushothaman. The said V.M.Purushothaman is none else than the father of the defendant/P.Srikanth. The father of the defendant settled the property in favour of one of his sons viz., Prabhakaran who had sold the property to the mother of the plaintiffs by way of a registered sale deed dated 12.12.2013. Subsequently, the mother of the plaintiffs settled the property in favour of the plaintiffs on 27.01.2022. As the plaintiffs have become the absolute owners of the property, they presented the suit for the aforesaid reliefs.

4. As pointed out above, when the suit was originally presented, the relief of mense profits had not been sought. Noticing this defect, an application was taken in I.A.No.3 of 2022 seeking to add the relief of damages for use and mense profits from April 2014 till the date of filing of the suit on 01.06.2022.



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5. The case of the respondent is that the property is not the absolute property of V.M.Purushothaman but a joint family property of V.M.Purushothaman, the defendant, and his brother Prabhakaran. Claiming that he has a share in the property, the defendant had already filed O.S.No.106 of 2013. Therefore, the argument of the defendant is that the settlement in favour of the plaintiff is hit by the principle of *lis pendens* and therefore, they are not entitled to claim for mense profits.

6. The learned trial judge seems to have been persuaded by the argument of the defendant and dismissed I.A.No.3 of 2024. Challenging the same, the present revision petition.

7. Heard Mrs.Valsala Kumari for the petitioners and Mr.Prakash Goklany for the respondent.

8. From the narration of the facts set forth above, it is clear that the plaintiffs' suit is one for a declaration of title and for recovery of possession. Normally, a party is entitled for mense profits if such prayer is sought even on



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the date of presentation of the plaint. Mense profit is, of course, subject to the plaintiffs proving their title to the property.

9. The factum that the settlement in favour of the plaintiffs is *lis pendens* is an admitted fact. The effect of the *lis pendens* enshrined under Section 52 of the Transfer of Property Act does not prevent the plaintiffs from seeking mense profits. The effect of Section 52 is that in case the partition suit filed in O.S.No.106 of 2013 is decreed, the suit itself in O.S.No.72 of 2022 seeking a declaration of title will have to be dismissed.

10. The fact that the predecessor-in-title of the plaintiffs/ Mr.P.Prabhakaran has a share is conceded by the defendant himself by virtue of presenting a suit for partition. Therefore, the only dispute that the trial court would have to decide is whether it is joint family property, and if it comes to the conclusion that it is joint family property, consequent orders will have to be passed in the present suit. If the court comes to the conclusion that it is not joint family property, then this suit necessarily has to be decreed.

11. A perusal of the plaint shows that the suit has been filed on 01.06.2022. The plaintiffs in a suit for declaration of title and recovery of possession are entitled to mense profits for three years prior to the presentation



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of the plaint. As that prayer has been left out, the plaintiffs want to amend the
WEB COPY plaint.

12. As rightly contended by Mr.Prakash Goklany, there is no way that the plaintiff can succeed in seeking damages for the period from April 2014 to 01.06.2022. This is because, even if they sought mense profits on the date of presentation of the plaint, the plaintiff would have at best been entitled to mense profits for a period of three years.

13. Furthermore, by grant of amendment, the plaint does not stop being one for declaration and recovery of possession nor is the cause of action of the suit changed. At best, the plaintiffs can be accused of having exhibited a lethargic attitude in presenting the amendment application. The same can be set off by imposing costs.

14. In the light of the above discussion, the order of the learned judge in I.A.No.3 of 2024 in O.S.No.72 of 2022 dated 26.02.2024 is set aside. The leave is granted to the petitioners to amend the plaint seeking mense profits from the month of June 2019 onwards, and the prayer for grant of mense profits and damages from April 2014 to June 2019 stands rejected.

15. For the delay in filing the application, the plaintiffs shall pay the defendant a sum of Rs.10,000/- as costs on or before 03.06.2024. If the cost is



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not paid before the aforesaid date, the application will stand dismissed. This civil revision petition is allowed with the above terms. 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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V.LAKSHMINARAYANAN, J.

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To

1.The Additional District Court (FTC) Vellore

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