



CRP No.2531 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

CRP No.2531 of 2024
and CMP No.13271 of 2024

Venkatachalam (died)

1.Saroja
2.Kayalvizhi
3.Adimoulam
4.Gunasekaran

.. Petitioners

-VS-

1.V.Muthulakshmi
2.V.Anbazhagan
3.V.Ilango
4.A.Manivizhi
5.K.Thenmozhi

.. Respondents

Prayer: Revision petition filed against the order passed in IA No.1081 of 2023 in OS No.79 of 2012, dated 15.03.2024, on the file of III Additional District Court, Puducherry.

For Petitioners : Mr.S.Saravanakumar

* * * * *



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ORDER

This civil revision petition is filed against the order of the learned III Additional District Judge, Puducherry, in I.A.No.1081 of 2023 in O.S.No.79 of 2012 dated 15.03.2024.

2. There is a prior history for the present litigation. The suit has been filed by the plaintiffs, being the wife and two sons, claiming that they are the legal heirs of the first defendant. According to them, 'A' schedule mentioned properties belonged to the mother-in-law of the first plaintiff and from the income that was generated from the 'A' schedule properties, 'B' and 'C' schedule properties were purchased. They presented the suit originally claiming that by virtue of Coromandal Customary Hindu Law, that was then applicable in the State of Puducherry, they are the "forced heirs" and therefore, the first defendant is not entitled to exclude them from the heirship of the properties. They filed the suit for declaration claiming that they are forced heirs and for declaration that the gratuitous dispositions that were made by the first defendant in favour of other defendants are valid only to the extent of 1/8 th share of the properties. In



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addition, they sought for the relief of declaration that they are entitled to 1/2 share in the 'B' and 'C' schedule properties and also for the relief of permanent injunction.

3. Denying the relationship between the plaintiffs and the first defendant, the first defendant presented a written statement. He would also plead that Coromandal Customary Hindu Law would not be applicable to the parties and that the 6th defendant therein had already filed a suit for declaration that the release deed executed in favour of the first defendant is null and void and that suit having been dismissed, in appeal, he would plead that the same issue cannot be reagitated. The parties went for trial and the evidence was closed. Thereafter, the plaintiffs moved an application for withdrawal of suit in I.A.No.292 of 2020 with liberty to file a fresh suit on the same cause of action. The said application came to be dismissed with an observation that in case there are any defects in the pleadings, the appropriate remedy for the plaintiffs is to amend the plaint and not to withdraw the suit and file a fresh suit. After liberty has been granted by this Court in CRP.No.1784 of 2021 dated 27.01.2023, the plaintiffs moved an application for amendment in I.A.No.1081 of 2023. After



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receipt of a counter from the first defendant, the learned Judge proceeded to allow the application, against which the present revision.

4. Mr.Saravanakumar would submit that the issues involved in the present suit had already been agitated by the 6th defendant in O.S.No.342 of 1995 and therefore, the present application, if granted, would amount to an abuse of process of law.

5. According to the plaintiffs, the suit had been presented on the basis of misunderstanding of law and the attempts by the plaintiffs to withdraw the suit had been nipped by this Court. However, even while dismissing the revision preferred by the plaintiffs herein, the Court granted them the liberty to move an appropriate application for amendment. If this Court were to entertain the revision and set aside the order granting amendment, it will be as if it is reviewing the order passed by this Court in CRP.No.1784 of 2021 dated 27.01.2023 which was passed after hearing the civil revision petitioners herein. Such a course of action is not available to this Court.



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6. Apart from that, by allowing the amendment application, the nature and character of the suit is not changed. It continues to be the suit for partition at the instance of the wife and the sons against the father who has gone to the extent of denying the paternity of the children.

7. I do not find any ground to interfere with the order dated 15.03.2024 passed in I.A.No.1081 of 2023 in O.S.No.79 of 2012 on the file of III Additional District Court, Puducherry. The civil revision petition is, accordingly, dismissed. There shall be no order as to costs. Consequently, CMP No.13271 of 2024 is closed.

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Index : Yes/No
Neutral Citation : Yes/No
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To

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V. LAKSHMINARAYANAN, J.

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