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C.R.P.[NPD].No.1636 of 2020

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 22.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.R.P.[NPD].No.1636 of 2020 & CMP.No.10034 of 2020

1. Someswaran
2. Nithishwaran

. . . Petitioners

Versus

1. Mohammed Hanifa [Died]
2. V.P.Thirumuruga Ramalingam
3. Mehbunnisa Begam
4. Shakila Banu
5. Syed Abutahir
6. Kamila Banu
7. Anusiya Banu
8. Asif Ali

[Respondents 3 to 8 are brought on record as
LRs of R1 as per Order of this Court in
CMP.Nos.22836, 22840 and 22843 of 2023
in CRP [NPD] No.1636 of 2020]

. . . Respondents

PRAYER : Petition filed under Article 227 of Constitution of India to set aside the fair Order and decretal Order dated 12.03.2020 passed in E.A.No.174 of 2016 in E.P.No.259 of 2014 in O.S.No.171 of 2002 on the file



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of the I Additional Subordinate Judge, Cuddalore.

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For petitioner : Mr.R.Gururaj

For respondents : Mrs.R.Meenal – R3 toR8

ORDER

Challenging the rejection of the application filed under section 47 of Code of Civil Procedure, claiming right as a joint family member, the present Civil Revision Petition has been filed.

2. Brief facts leading to filing of the Civil Revision Petition is as follows

:

The petitioner's father one Thirumuruga Ramalingam has executed an agreement in favour of the one Mohammed hanifa, the first respondent herein on 16.12.1998 for sale of the property. It is agreed between the parties that the sale consideration is Rs.1,12,000/-. As the first respondent has not performed his part of the contract, the suit came to be filed for specific performance in O.S.No.171 of 2002 before the II Additional Sub Court, Cuddalore by the first respondent. The said suit was decreed on 28.06.2002



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granting specific performance. As against which an appeal in A.S.No.64 of 2007 filed by the Judgment Debtor has also been dismissed on 22.08.2008 by the Principal District Judge, Cuddalore. Challenging the concurrent finding, a second appeal has been filed by the first respondent in S.A.No.356 of 2009 before this Court. The second appeal has also been dismissed on 28.04.2015. Therefore, to enforce the decree of specific performance, an execution petition has been filed by the petitioner in E.P.No.174 of 2016. At this stage, an application in E.A.No.174 of 2016 has been filed by the revision petitioners, who are sons of the judgment debtor, stating that the property is a joint family property and it has been purchased out of the joint family nucleus. The trial Court has dismissed the above application. Challenging the same, the present revision petition has been filed.

3. It is the contention of the revision petitioner that the evidence of P.W.1 has not been controverted and he has clearly spoken about the existence of the joint family nucleus. Therefore, the Order of the trial Court has to be set aside.



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4. The respondent has opposed the petition stating that there is no evidence with the regard to the existence of joint family nucleus and the property is a joint family property. Where as it is the absolute property of the father of the revision petitioner which has been purchased in the year 1995. Hence, opposed the application.

5. I have purchased entire materials. This application has been filed seeking right as a joint family property under section 47 of Code of Civil Procedure. It is relevant note that the suit has been originally filed in the year 1998 for specific performance. The suit has been decreed on 28.06.2002. Thereafter, the second appeal has also been dismissed confirming the concurrent finding of the Courts below on 28.04.2015 in S.A.No.356 of 2009. At this stage, an application has been filed in execution proceedings and the said application has been taken out claiming 2/3 share in the property.

6. It is relevant to note that a person who asserts right on the basis of that property is a joint family property, it is imperative on their part not only to



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prove joint family nucleus but to prove the factum of existence of joint family nucleus. Excepting making a bare contention that the property is a joint family property, no evidence whatsoever, has been adduced. That apart, it is also relevant to note that the suit was decreed by the trial Court and the appeals filed against the said judgment and decree has also been confirmed as early as on 28.04.2015 in the second appeal. If really, the parties have any share in the property, nothing prevented them from establishing their right by filing a partition suit all these years. No such attempt, whatsoever, has been made. Further the so called agreement entered between the joint family members has not been challenged by the members of the joint family. It is not the case of the petitioner that they were minors at the relevant point of time. Even assuming that there is a joint family property, the petitioner father being the Kartha, he entitled to deal with the property for legal necessity. As long as the agreement has not been challenged all these years, just filing an application under section 47 of Code of Procedure to establish their right which has already been lost by operation of law and decree of the Court, this Court is of the view that the application is nothing but devoid of merits.



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7. Accordingly, this Civil Revision Petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet: Yes

Speaking/non speaking order

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N. SATHISH KUMAR, J.

VTC

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