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C.R.P.(PD).No1634 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.1634 of 2021

and

C.M.P.No. 12705 of 2021

1.N.Samivelu

2.S.Chandrasekaran

3.S.Baskaran

4.S.Ganesan

... Petitioners

Versus

1.S.Sivakumar

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the Fair and Decretal Order dated 13.11.2019 made in I.A. No.13 of 2018 in O.S.No.10 of 2016 on the file of the Sessions Judge, Mahila Court, Perambalur.

For Petitioners : Mr. C. Prabakaran

For Respondent : Address cannot be located



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ORDER

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This Civil Revision Petition is filed challenging the order passed by the Court below dismissing the amendment application in I.A. No.13 of 2018 in O.S.No.10 of 2016 filed by the petitioners/defendants.

2. The respondent herein has filed a suit in O.S.No.10 of 2016 for partition against the petitioners herein. It is the case of the petitioners that the properties described in the schedule to the amendment application is also a joint family property, purchased out of the joint family funds in the name of the first defendant/first petitioner herein for the benefit of the family. Hence, the said property has also be included in the schedule to the plaint filed by the respondent/plaintiff.

3. The said amendment application was opposed by the respondent/plaintiff on the ground that the properties mentioned by the petitioners/defendants was exclusive properties of the respondent and hence, the same was not available for the partition.



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4. The said application filed by the petitioners/defendants was dismissed by the Court below on the ground that the defendants cannot seek the amendment of the plaint.

5. The respondent herein filed the said suit, seeking partition of the properties mentioned in the schedule to the plaint. Now, the petitioners/defendants have come up with the case that some other property is also available for partition, which was not included in the schedule to the plaint. During the course of the trial, the Court below can very well go into the question whether the property mentioned by the petitioners/defendants is also available for partition or not.

6. In case, the Trial Court comes to the conclusion that the property which is sought to be included in the plaint is also a joint family property and the same is available for partition, it can pass a comprehensive decree for all the properties.

7. In a suit filed for partition by the respondent, if the property mentioned by the defendant in his written statement is not included in



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plaint, the Court is empowered to pass a comprehensive decree in respect of all the properties or otherwise, the suit will fail for partial partition.

8. In view of the above, the Civil Revision Petition is disposed of with the above clarification that the Trial Court can consider the question whether the property mentioned by the petitioners is also available for partition or not and dispose of the suit in accordance with the law. Consequently, the connected miscellaneous petition is also closed. No costs.

12.02.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Case Citation : Yes / No

klt

To:

1.The Sessions Court, Mahila Court, Perambalur.



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S. SOUNTHAR. J.,

klt

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