



C.R.P.(PD)No.2460 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.2460 of 2024

and

C.M.P.No.12845 of 2024

1.R.Kalaimani

2.M.Palanisamy

.. Petitioners

Vs.

Samyuktha Gomathi

.. Respondent

Prayer : The Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the docket order, dated 01.04.2024, passed in Unnumbered I.A.No. of 2024 in O.S.No.69 of 2018 on the file of the Sub Court at Paramathy.

For Petitioners : Mr.S.Senthil



C.R.P.(PD)No.2460 of 2024

ORDER

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The present Civil Revision Petition arises against an order passed by the learned Subordinate Judge at Paramathy in Unnumbered I.A.No. of 2024 in O.S.No.69 of 2018.

2. O.S.No.69 of 2018 was originally presented as O.S.No.57 of 2014 on the file of the Sub Court at Namakkal. The plaintiff is the respondent in this revision. Claiming to be the daughter of one R.Pandian, she has filed a suit for partition against her co-sharers. In the suit, the present civil revision petitioners were impleaded as defendant Nos.5 and 6.

3. The case of the respondent herein is that the 1st defendant had executed a power of attorney in favour of the 3rd defendant on 06.08.1997 and the 3rd defendant had borrowed money from defendant Nos.5 and 6. Claiming that the borrower had defaulted in payment of monies due to the civil revision petitioners, a suit came to be presented in O.S.No.177 of 2015 on the file of the Principal District Court at Namakkal. This suit is for recovery of money. The said suit was dismissed after contest on 03.12.2019.



C.R.P.(PD)No.2460 of 2024

WEB COPY

4. Against the said judgment and decree, a regular appeal was preferred before this Court in A.S.No.928 of 2020. Claiming that as the defendants *inter se* have executed the Powers of Attorney in favour of defendant Nos.5 and 6, the civil revision petitioners filed an application under Section 10 of the Code of Civil Procedure that the partition suit be stayed till the money suit is finally disposed of.

5. An application under Section 10 of the Code of Civil Procedure is maintainable only when there are issues in common between the previously instituted suit and the subsequent suit. An application under Section 10 of the Code of Civil Procedure is not mandatory but only discretionary. The mere fact that the issues are in common does not mean the Court should automatically stay the subsequent proceeding. In the present case, defendant Nos.5 and 6, who are the civil revision petitioners, have a money claim against the other defendants. However, they do not have any right to deny the share of a lady who has filed a suit seeking partition against her co-sharers. Infact, the issues are also not in common.



C.R.P.(PD)No.2460 of 2024

WEB COPY

6. Hence, I do not find any reason to interfere with the order passed by the learned Subordinate Judge at Paramathy. Accordingly, the Civil Revision Petition stands dismissed. No costs. The connected Civil Miscellaneous Petition is closed.

18.07.2024

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No



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C.R.P.(PD)No.2460 of 2024

V. LAKSHMINARAYANAN, J.

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To

The learned Subordinate Judge,
Paramathy

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