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C.R.P.(PD).No.3389 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.3389 of 2023
and C.M.P.No.21051 of 2023

Srinivasan

.. Petitioner

Versus

1. Sudharshini
2. Chinnadurai
3. Meenatchi
4. Soundarya

.. Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to strike off the plaint in O.S.No.236 of 2018 on the file of Sub Court, Palladam and allow the revision.

For Petitioner : Mr.Sunil

For Respondents : Mr.S.Sithirai Anandam, for R1

: No Appearance for RR-2 to 4

ORDER



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This Civil Revision Petition is filed seeking to strike of the suit in O.S.No.236 of 2018 on the file of the learned Subordinate Judge at Palladam. The relationship between the parties is not in dispute.

2. The civil revision petitioner is the fourth defendant in the suit. He had purchased the property from the first defendant. The plaintiff and the defendants 2 and 3 are the children born to the first defendant. Claiming partition, the plaintiff presented the suit. It is her specific and categorical case that on 19.02.2001, the first defendant came across the property by virtue of partition that had been effected by him and his brothers. The plaintiff pleads that the property is an ancestral property of the first defendant and by virtue of the amended Hindu Succession Act, she has a share in the same.

3. Heard Mr.Sunil, learned Counsel for the civil revision petitioner and Mr.S.Sithirai Anandam, learned Counsel for the respondent.

4. Mr.Sunil would submit that in view of the verdict of this Court in ***M.Kumaran and Anr. Vs. J.Rajesh (Minor), rep. by his mother and***



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natural guardian J.Gomathi and Anr., 2010 5 LW 329, the property which came to the share of the first defendant has to be treated as a self-acquired property and therefore, he is entitled to alienate the same in favour of any person. He says that being an innocent purchaser from the first defendant, the first defendant seems to have projected the suit using his daughter.

5. I agree with Mr.Sunil that if the property is the exclusive property of the first defendant, obviously, he has a right to alienate the same and his children will not have a cause of action to present the plaint. However, a careful perusal of paragraph No.3 of the plaint shows that the plaintiff has specifically pleaded that the property is an ancestral/joint family property of the first defendant. The position of law with respect to the daughters, having a share in the joint family, has been recently settled by the Supreme Court in *Vineeta Sharma Vs. Rakesh Sharma, (2020) 9 SCC 1*. The issue whether the property is an ancestral property or a joint family property or whether it is a self-acquired property of the first defendant are matters which necessarily have to undergo the ordeal of trial. The same cannot be a subject matter of a revision. This is because, in the revisional stage, I go



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through the plaint and thereafter decide whether there is a cause of action or not.

6. In the light of the above discussion, I do not think that the plaint in O.S.No.236 of 2018 is bereft of cause of action for me to exercise the power under Article 227 of the Constitution of India and strike it off. Making it clear that the issue whether it is a joint family property or self-acquired property will be gone into at the time of trial, this Civil Revision Petition is dismissed. It is represented that the pleadings having been completed. The learned Subordinate Judge at Palladam is requested to expedite the suit and dispose of the same by taking note of the fact that the suit is pending for the past 6 years. No costs. Consequently, connected miscellaneous petition is closed.

13.08.2024

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
grs

To



The Sub Judge,
Palladam.



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V.LAKSHMINARAYANAN, J.

grs

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