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C.R.P (PD) No.3062 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2024

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P (PD) No.3062 of 2024

&

C.M.P.No.16515 of 2024

1.Mr.O.V.Hari
2. Mr.O.H.Yuvaraj

.. Petitioners

vs.

1. Mr.O.V.Mani
Kasthuri (Died)
2. Mrs.Rupa
3. Mrs.Kala
4. Mrs.Geetha
5. Mr.Makesh
6. Mrs.Sumathi
7. Mrs.Sudha
8.Mr.Thiyagu
9. Mrs.Rojamani
10. Mr.G.Arunodhayam
Devagi (Died)
Meera (Died)
11. Mrs.Latha
12.Mrs.Primila
13. Mrs. Renuka
Babu (Died)
14. Mrs. Rathna
15.Ruba
16. Minor Darshan

..Respondent



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Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order passed in I.A.No.1 of 2024 in O.S.No.555 of 2005 by the Hon'ble District Munsif Court at Gudiyattam, Vellore District on 30.04.2024.

For Petitioners : Mr.G.Harimahesh

ORDER

This Civil Revision Petition arises against the order of learned District Munsif, Gudiyattam at Vellore District dated 30.04.2024 in I.A.No.1 of 2024 in O.P.No.555 of 2005.

2. The civil revision petitioners are the defendants 1 and 6 in the suit. They are the brothers of the plaintiff. The suit had been presented by the first respondent herein pleading that the suit schedule mentioned properties were all purchased from and out of the income generated by the joint family in the name of family members. The first respondent herein/plaintiff had pleaded in paragraph 5 of the plaint that the sale deed though stood in the name of the mother and brothers, they were only nominal in nature but the purchase was meant for the benefit of the joint family. On the basis of these pleadings, the plaintiff sought for passing of a preliminary decree and for consequent proceedings.



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3. A detailed written statement was filed by the defendants resisting the claim. Thereafter, defendants 1 and 6 moved an application for rejection of plaint. The ground on which defendants 1 and 6 sought for rejection of plaint is that Ms.Kasthuri, wife of the plaintiff had executed a sale deed with respect to the 8th item of the property on 02.04.2014 in favour of one Shakeera Begam. In the said sale deed, she had not mentioned the facts pleaded in the plaint. According to them, the 8th item of property was not purchased from the proceeds of the joint family business and therefore, by taking strength from the sale deed, which had come to effect *pendente lite*, they sought for rejection of the plaint.

4. The learned District Munsif ordered notice in the application. The first respondent filed a counter stating that the 8th item of the property is a self-acquired property which belongs to Kasthuri. She had sold the property due to urgent needs for herself and for the family. They would also point out that the suit having been filed in the year 2005 and the examination of the parties having already been completed, the application for rejection of plaint is only to drag on the proceedings.

5. The learned District Munsif agreed with the respondents and dismissed the petition for rejection of plaint against which the present



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6. Heard Mr.G.Harimahesh for the petitioner.

7. Mr.G.Harimahesh taking me through the plaint as well as the documents that have been filed by him in the typed-set of papers would contend that the defendant Kasthuri had sold the property as if it is her self-acquisition whereas the pleading in the plaint is that it is a joint family property. He would state that this Court has to take into consideration the subsequent document and reject the plaint.

7. I have carefully considered the submissions of the learned counsel and gone through the records.

8. The case of the plaintiff is that the properties were purchased from and out of the income of the joint family. This was resisted by the defendants saying that it is not a joint family property but it is their self-acquisition. Whether the property is a joint family or self-acquisition cannot be gone into in an application filed for rejection of plaint. This is because I have to take the averments made in the plaint to be true and find out if cause of action exists. The averment in paragraph No.5 of the plaint is clear and categorical that the purchase that had been made in the name of the members of the family were only nominal in nature and it was not with an intention to benefit them as absolute owners. It is also



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pleaded in the plaint that all the purchases were made from and out of the joint family funds. Therefore, a subsequent document cannot be read for the purpose of holding that the plaint presented at least 9 years earlier loses the cause of action. The view taken by the learned Judge in paragraph No.3.5 of the impugned order is the correct position of law and does not require interference.

9. Consequently, the civil revision petition is dismissed. As the evidence having been completed and the suit being pending for more than 19 years, the learned District Munsif, Gudiyattam is requested to dispose of the suit applying the appropriate administrative directions issued by this Court for suits pending for more than 10 years. There shall be no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

07.08.2024

Index: Yes/No

Neutral Citation: Yes/No

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To

1. The District Munsif Court
Gudiyattam, Vellore District

2. The Section Officer
VR Section
Madras High Court



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V. LAKSHMINARAYANAN, J.

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