



C.R.PPD.No.2926 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.PPD.No.2926 of 2022 and
C.M.P.No.15865 of 2022

Vasanthi

... Petitioner

Vs.

1.Manimekalai
2.Minor Jeevan
3.Minor Suman
4.Nalini
5.Minor Kavini

... Respondents

PRAYER: Revision filed under Article 227 of the Constitution of India praying to set aside the fair and final order dated 29.07.2022 passed by the learned Subordinate Judge, Kangeyam in I.A.No.117 of 2020 in O.S.No.402 of 2017.

For Petitioner : Mr.A.Sriram

For R1 and R4 : Served – No appearance

For R2 and R3 (Minor) : Rep. By R1

For R5 (Minor) : Rep. By R4

ORDER

O.S.No.402 of 2017 is a suit for partition pending on the file of the

Subordinate Judge, Kangeyam.



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2. In that suit, an application was taken in I.A.No.117 of 2020 for rejection of the plaint by the 1st defendant. The case of the plaintiffs is that one deceased Balasubramaniam had executed a promissory note in favour of Ramalingam, which was defaulted. This constrained Ramalingam to file a suit for recovery of money in O.S.No.144 of 2004 on the file of the Subordinate Judge at Karur. Pending the suit, the suit schedule mentioned property was attached in I.A.No.235 of 2004 on 12.10.2004. Subsequently the suit was decreed and to execute the same, an execution petition in E.P.No.87 of 2012 was levied on the file of the Subordinate Judge, Dharapraum. In the said execution petition, the suit schedule mentioned property was brought for auction and was purchased by the 1st defendant. Therefore, the plaintiff in order to get their original share of the suit schedule mentioned property, alleging that the property is a joint family property, presented the suit for partition.

3. The 1st defendant had entered appearance and took out an application for rejection of the plaint on the ground that it is an abuse of process of Court. According to her, the matter had been settled by the learned Subordinate Judge at Dharapuram when he brought the property for auction and when it was purchased by the 1st defendant. According to



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the 1st defendant, the entire suit has been engineered with clever drafting by the 2nd defendant along with the plaintiffs. Therefore, she sought for rejection of plaint.

4. The learned trial Judge in and by his order dated 29.07.2022 came to the conclusion that there were triable issues and the suit had cause of action and therefore he dismissed the petition. Hence, the present revision is before me.

5. This Court on 19.09.2022 ordered notice regarding admission to the respondents. The respondents, though being served with notice, have not entered appearance.

6. Mr.A.Sriram for the petitioner would submit that as a Court auction purchaser, he gets right over the property and the present suit for partition is only to defeat his rights. Therefore the present suit is an abuse of process of Court. He would state that in case of abuse of process of Court, the Court possesses sufficient jurisdiction to reject the plaint as it should not entertain vexatious litigation.



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7. I have carefully applied my mind to the facts of the case and have considered the argument of Mr.A.Sriram. I have to begin my decision by stating that in the Court auction, the 1st defendant purchased the property on 01.06.2015, which was the share of the deceased Balasubramaniam, the father of the plaintiffs and the husband of the 2nd defendant. In such a proceeding, the nature of the property whether it is ancestral or self-acquired is not decided. Therefore, that issue would necessarily have to be proved in a separate proceeding. The factum that the decree was not obstructed does not take away the right of the other sharers from presenting the suit for general partition. It is in pursuance of that right that the present plaint has been presented before the learned Subordinate Judge at Kankeyam.

8. For the purpose of rejection of plaint, I have to take the averments made in the plaint to be true. According to the plaintiffs, the deceased Balasubramaniam only had a fractional share in the property which was purchased by the 1st defendant. Therefore, he is entitled, as a co-owner, of the property as regards that share which would have fallen to Balasubramaniam in case a partition suit had been presented during his life time.



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9. I am not concerned with the defence taken by the defendants nor with the possibility that the suit might be dismissed. The plea being one of demurrer, I have to necessarily, as pointed out above, take the averments to be true. If I take the averments to be true, I find a cause of action for the suit. Therefore, I have no reason to differ from the view taken by the learned Subordinate Judge at Kankeyam in I.A.No.117 of 2020 in O.S.No.402 of 2017 dated 29.07.2022.

10. In fine, the Civil Revision Petition is dismissed. As the respondents have not entered appearance, there is no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

03.04.2024

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No
Sgl

To

The Subordinate Judge,
Kangeyam.



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V.LAKSHMINARAYANAN, J.

Sgl

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