



C.R.P. (PD) No.3037 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition (PD) No.3037 of 2024
and C.M.P.No.16342 of 2024

Latchumi

.. Petitioner/Petitioner/ 3rd Party

Versus

Govindhammal

.. Respondent/Respondent/Plaintiff

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 05.04.2024 made in I.A.No.11 of 2024 in O.S.No.4 of 2020 on the file of the Court of Principal District Judge, Ariyalur.

For the Petitioner : Mr.J.Ramakrishnan

ORDER

The suit in O.S.No.4 of 2020 has been filed by the respondent herein.

The respondent has filed the suit for partition and separate possession by



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impleading her brother as the 1st defendant and her nephew as the 2nd defendant.

2. It is the case of the plaintiff that the schedule mentioned property is the absolute property of one Samikannu Padayachi, who died in the year 1964. According to her, on the death of Samikannu Padayachi, herself and 1st defendant succeed to the estate. She would plead that the 1st defendant – her brother without giving her share, had alienated the property, in favour of the other defendant. In this suit, which is predicated on the fact that it is a self acquired property of Samikannu Padayachi and that the plaintiff succeeds on his death to the property.

3. The Civil Revision Petitioner filed an impleading application. According to her, being a co-parcener, she has a right in the ancestral assets of Samikannu Padayachi. Therefore, she wanted to implead herself as party to the suit proceedings. The impleading application was numbered as I.A.No.11 of 2024 and after receipt of a counter from the plaintiff, the application came to be dismissed on 05.04.2024. Against which, the present revision has been filed.



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4. Mr.Ramakrishnan, would submit that being the ancestral property of Samikannu Padayachi, the proposed parties by virtue of amendment to Section 6 of the Hindu Succession Act, 1956, is entitled to a share in the same.

5. In case, the plaintiff had pleaded that it is the ancestral property of Samikannu Padayachi, perhaps one would have to consider the semblance of right that the Civil Revision Petitioner will have. Per contra, a specific plea of the plaintiff is that the property is the exclusive property of Samikannu Padayachi. If it is exclusively belongs to him, then on his death, only his legal heirs are entitled to succeed the estate. In such a suit, based on succession to the estate, the plea of an ancestral nucleus cannot be gone into. The appropriate remedy for the Civil Revision Petitioner, if at all she has a right and if the property is an ancestral property, is only to file a separate suit for partition, by impleading the plaintiff as a party to the suit.

7. Further, a plaintiff is *dominus litis*. If one were to implead the petitioner, I will be making the plaintiff fight with a person with whom she



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does not want to fight. It will lead to embarrassment of the trial. The embarrassment of the trial means, the plaintiff pleads that it is a self acquired property of Samikannu Padayachi, which is admitted by the 1st defendant as seen from the impugned order and the proposed party, viz., the Civil Revision Petitioner pleads that it is an ancestral property. The issues being alien and in fact, at certain stages of the trial be contradictory, I am not inclined to set aside the order dated 05.04.2024 passed by the Principal District Judge, Ariyalur in I.A.No.11 of 2024 in O.S.No.4 of 2020.

Leaving it open to the Civil Revision Petitioner to file a suit for partition, this Civil Revision Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

06.08.2024

Index : Yes / No
Internet: Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No
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To
The Principal District Judge
Ariyalur.



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V.LAKSHMINARAYANAN, J.,

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