



C.R.P.(PD).No.3587 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.3587 of 2024
and C.M.P.No.19449 of 2024

Karuppasamy

.. Petitioner

Versus

Chinnakannal @ Karuppathal

.. Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and final order passed in I.A.No.1 of 2023 of O.S.No.103 of 2023, dated 08.04.2024 by the I Additional Subordinate Court of Coimbatore and to allow this Civil Revision.

For Petitioner : Mr.M.Saravanakumar

ORDER

This Civil Revision Petition arises against the order passed by the learned I Additional Subordinate Judge, Coimbatore in I.A.No.1 of 2023 in O.S.No.103 of 2023, dated 08.04.2024.

2. O.S.No.103 of 2023 is a suit for partition and for declaration that the sale deed, executed by one Dhakshanamoorthy and others in favour of



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the petitioner/fifth defendant, is null and void and does not bind the 1/3rd share of the respondent/plaintiff.

3. The case of the respondent/plaintiff is that a large extent of property, including the suit schedule property, was allotted to one Marappa Gounder. The respondent/plaintiff, who is the wife of Ayee Gounder, was born to Marappa Gounder. Marappa Gounder had three children namely, the respondent/plaintiff, Pappal @ Sivagami @ Sivathal/the first defendant and one Kuppathal. Marappa Gounder passed away on 01.11.1985. He died intestate. Kuppathal passed away on 02.03.2000 and she left behind Sridevi, Thilagamani and Ramasamy @ Chinniya Gounder as her legal heirs. The plaint proceeds that the respondent/plaintiff and her son, Ganeshamoorthy and daughter, Bhuvaneshwari, along with the first defendant, Pappal @ Sivagami @ Sivathal and her daughter, Loganayagi, with the legal heirs of Kuppathal namely, the defendant Nos.2 to 4 had alienated an extent of 69 cents in survey No.795/1 in favour of one V.Mohankumar and C.Vanitha. She would plead that in November, 2022, when they applied for an Encumbrance Certificate, they came to know that



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the civil revision petitioner/fifth defendant had created a document over the suit property. Immediately, she presented the suit for the aforesaid reliefs.

4. On service of summons, the civil revision petitioner/fifth defendant took out an application for rejection of plaint. He would plead that the document executed by the respondent/plaintiff and others in favour of V.Mohankumar and C.Vanitha is to an extent of 69 cents in survey No.795/1, but, contrary to the same, the respondent/plaintiff would plead that she had retained 66 cents in 795/1F. He would plead that since there is a difference in the extent that is claimed by the respondent/plaintiff, the plaint has to be rejected. In addition, he would plead that no patta had been produced by the respondent/plaintiff to substantiate her case.

5. The learned Judge, after receiving a counter from the respondent/plaintiff, came to a conclusion that the plea that was raised by the civil revision petitioner/fifth defendant is a matter which has to be gone into at the time of trial and therefore, dismissed the petition. Hence, this Revision.



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6. Heard Mr.M.Saravanakumar, learned Counsel for the civil revision petitioner.

7. Mr.M.Saravanakumar would submit that, as per the plaint document No.3, which he has placed for my perusal, the respondent/plaintiff has alienated the entire extent in S.F.No.795/1F and they are not entitled to raise a plea regarding the 66 cents purchased by the civil revision petitioner/fifth defendant. He would state that the civil revision petitioner/fifth defendant is a bonafide purchaser of the property from a co-sharer namely, Sennimalai Gounder, who was also allotted a share being the legal heir of Chinnakaruppa Gounder and therefore, the claim filed after a period of 38 years is not maintainable. In order to substantiate his case, he would refer to a judgment of the Supreme Court in ***Ramisetty Venkatanna and Anr. Vs. Nasyam Jamal Saheb and Ors.***, in ***Civil Appeal No.2717 of 2023***, dated 28.04.2023.

8. I have carefully considered the arguments of Mr.M.Saravanakumar and have gone through the authority cited by him.



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9. The fundamental principle governing rejection of plaints is that I have to read the plaint and find out if it states any cause of action or whether it is barred by any of the provisions of law. At that time, I am not entitled to look into the defence that has been or will be raised by the defendants. It is only the plaint and the plaint documents alone which decide the fate of the application. In the present case, a reading of the plaint shows that it is the specific case of the respondent/plaintiff that the suit schedule mentioned property came to Marappa Gounder on 16.12.1943. Marappa Gounder died "intestate", leaving behind him his legal heirs to succeed to the estate. In the exercise of their right of ownership, the plaintiff proceeds that they had alienated an extent of 69 cents of the property retaining the remaining portion.

10. According to the respondent/plaintiff, the civil revision petitioner/fifth defendant had created a document over the property through Sennimalai Gounder, who has no right over the same. If I have to accept the argument of Mr.M.Saravanakumar that Sennimalai Gounder is the owner and not Marappa Gounder, I would exceed the scope of Order VII Rule 11 of the Code of Civil Procedure. The question, whether Marappaa Gounder



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is the rightful owner or Sennimalai Gounder is the owner is a matter which has to be decided only after trial.

11. Insofar as the judgment referred to by Mr.M.Saravanakumar is concerned, it is factually different from the one that I am dealing with. In that particular case, the respondent had accepted that their predecessor in title had obtained the property by way of a partition deed, dated 11.03.1953 and had also been benefited with one acre of land under the said document. The plea that they had raised in the suit was that the survey number given in the partition deed was erroneous, and hence, they presented the suit. The Supreme Court held that having obtained the benefit under the partition deed, the respondent cannot plead against the said document. On the contrary, in the facts of the present case, the categorical plea of the respondent/plaintiff is that the property came to Marappa Gounder alone and not to any other person. This is a simple suit for partition based on succession and hence, the judgment of the Supreme Court is inapplicable to the facts of the present case.



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12. Leaving it open to the civil revision petitioner/fifth defendant to raise all such defence as is available to him at the time of trial, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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

To

The I Additional Subordinate Court,
Coimbatore.



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V.LAKSHMINARAYANAN, J.

grs

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