



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.09.2024

CORAM

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No. 3572 of 2024

&

C.M.P.No. 19367 of 2024

1.Nagajothi

2.Poorani

3.Kokila

...Petitioners

Vs.

1.Sasirekha

2.Pazhaniammal

...Respondents

Prayer: Petition filed under Article 227 of the Constitution of India against the fair and final order passed in I.A.No.337 of 2021 in O.S.No.640 of 2007 on the file of the District Munsif – cum – Judicial Magistrate, Madathukulam dated 13.06.2024.



For Petitioner : Mr. B.Gopalakrishnan

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ORDER

This Civil Revision Petition arises against the order in I.A.No.337 of 2021 in O.S.No.640 of 2007, dated 13.06.2024, passed by the learned District Munsif - cum – Judicial Magistrate, Madathukulam.

2. The 1st petitioner, Nagajothi, is the 1st defendant in the suit. The 2nd respondent has filed a suit for partition and separate possession. The properties are said to belong to one Aarumugam. Aarumugam is the husband of the said Nagajothi and the father of Poorani and Kokila, the 2nd and 3rd civil revision petitioners. They were arrayed as defendants 2 and 3 in O.S.No.640 of 2007. The 2nd respondent, Pazhaniammal is the mother of Aarumugam. On account of her demand for partition remaining unsatisfied, she presented O.S.No.640 of 2007 on the file of the learned District Munsif, Udumalpet. The said suit was decreed on 12.11.2013, granting 1/4th share to each of the



parties to the suit. To make it clear, the mother of Aarumugam was granted 1/4th share in the property and the civil revision petitioners, namely, wife and children of Aarumugam, were granted 1/4th share each.

3. Aggrieved by the same, the defendants preferred an appeal before the Sub Court, Udumalpet in A.S.No.18 of 2014. The said appeal came to be dismissed by the learned Subordinate Judge, Udumalpet, confirming the preliminary decree on 29.01.2019. The parties claim to have preferred a Second Appeal with condone delay petition in C.M.P.No.20937 of 2019.

4. Finding that the declaration that had been granted i.e., 1/4th share each, had not yet been set aside, the mother of Aarumugam alienated her share in favour of the 1st respondent, Sasirekha. Sasirekha filed an application to implead herself in the proceeding. The learned District Munsif, Madathukulam, allowed the application. Hence, the revision.



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5. Heard Mr.B.Gopalakrishnan for the civil revision petitioners.

He would plead that in a suit for partition, the third party stranger cannot be impleaded to the suit. Hence, he would plead that order impugned deserves to be set aside.

6. I have carefully considered the arguments of the learned counsel and gone through the entire records.

7. There is no dispute that the said Pazhaniammal is the mother of the said Aarumugam. A suit for partition has been presented by Pazhaniammal to enforce her share in the property that had been left behind due to the death of her son, Aarumugam. The Trial Court decreed the suit granting 1/4th share and the Lower Appellate Court has also confirmed the said decree. Therefore, as a successful decree holder, Pazhaniammal has alienated the property in favour of the 1st respondent, Sasirekha.



8. The plea that the said Pazhaniammal cannot alienate her share cannot stand a moment's scrutiny. A legal representative is entitled to alienate the property which fell to his share, to any third party. Such a third party would become an assignee of the successful decree holder. In terms of Section 146 read with Order XXII Rule 10 of the Code of Civil Procedure, assignee can be brought on record to continue the proceedings that had been initiated by the Assignor / successful decree holder.

9. It is in exercise of that power, the present application seems to have been taken out. The plea of the learned counsel for the petitioner that Order I Rule 10 of the Code of Civil Procedure, does not apply would not persuade me to admit the Civil Revision Petition. Order XXII Rule 10 of the Code of Civil Procedure, makes it clear that the assignee shall be brought on record to continue the proceedings.



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10. I do not find any error in the order passed by the learned District Munsif, Madathukulam. Accordingly, the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

06.09.2024

Index : Yes/No
Internet : Yes/No
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To

The District Munsif,
Madathukulam.

V.LAKSHMINARAYANAN, J.



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