



C.R.P.(PD).No. 3895 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.09.2024

CORAM

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No. 3895 of 2024

&

C.M.P.No. 21329 of 2024

S.Ramachandran

...Petitioner

Vs.

1.S.N.Soundaram

2.Nalini Visalakshi

3.S.Anantharaman

4.S.Subramaniam

5.S.Manjunathan

6.S.Ranganathan

7.R.Sesathri

8.R.Subramaniam

...Respondents



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Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order in I.A.No.1 of 2022 in O.S.No.1239 of 2017 dated 11.06.2024 on the file of the Principal Subordinate Judge, Coimbatore.

For Petitioner : Mr. N.Umapathi.

ORDER

This Civil Revision Petition arises at the instance of the 1st defendant. The defendants moved an application for rejection of the plaint in I.A.No.1 of 2022 in O.S.No.1239 of 2017. This application was dismissed by the learned Principal Subordinate Judge, Coimbatore. Hence, the revision.

2. O.S.No.1239 of 2017 has been presented by the sister-in-law of the defendants 1 to 3 and the paternal aunt of defendants 4 to 6. The plaintiff is admittedly the wife of one Ramakrishnan, sibling of



defendants 1 to 3. According to her, the property belonged to one Subramania Sharma and the plaintiff being the wife of a predeceased son is entitled to a share in the same.

3. Earlier, the plaintiff filed a suit for partition in O.S.No.588 of 2013 on the file of the I Additional Subordinate Court, Coimbatore. The said suit was dismissed for default on 10.06.2016. Taking inspiration from this dismissal, the defendants 1 to 7 plead as follows:

(i) Filing of fresh suit for partition after dismissal of the previous suit is barred under Order II Rule 2 of the Code of Civil Procedure.

(ii) The C – Schedule property mentioned in the suit in O.S.No.1239 of 2017 is self acquisition of the 1st defendant / civil revision petitioner and hence incapable of being partitioned.

4. The learned Trial Judge dismissed the application for rejection of the plaint on 11.06.2024. Challenging the same, the present



revision.

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5. Heard Mr.Umapathi for the civil revision petitioner.

6. Mr.Umapathi draws my attention to the Judgement passed by the I Additional Subordinate Judge, Coimbatore, on 10.06.2016 and points out that the C schedule property was not included in the said suit. He further submits that no leave was obtained from the Court, which dismissed the suit, to present a fresh suit for partition and hence the plaint ought to have been rejected.

7. I have carefully considered the arguments of Mr.Umapathi and perused the records.

8. Being an application for rejection of the plaint, I have to take the averments made in the plaint to be true. According to the plaintiff, the A and B schedule properties belonged to one Subramania Iyer, the paternal grand father of her father-in-law, Subramania Sharma. Out of



natural love and affection, the said Subramania Iyer had executed a settlement deed in favour of Subramania Sharma in Doc.No.204 of 1941 dated 27.03.1941.

9. The plaintiff pleads that from and out of the income from the A schedule property, Subramania Sharma purchased the C schedule property in the name of the 1st defendant on 07.09.1995. She adds that when she filed a suit in the year 2013, soon after death of her husband in 2012, she did not include the C schedule property in the plaint. She states that O.S.No.588 of 2013 was dismissed for default on 10.06.2016, and hence she brought forth the present suit for partition after including the legal heirs of Meenakshi, who was the 2nd defendant in the suit O.S.No.588 of 2013.

10. As long as a family remains joint and undivided, the cause of action for partition suit arises day to day. Unlike, a suit for declaration where suit has to be presented soon after the cause of action arises, partition suit can be filed as long as the family is joint.



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11. The fact that O.S.No.588 of 2013 was dismissed for default does not mean a fresh suit for partition cannot be presented. Furthermore, the non inclusion of properties can be treated as formal defect in presentation of a partition suit. Therefore, the suit filed in O.S.No.588 of 2013 suffered from this formal defect.

12. At this stage, Mr.Umapathi contends that the C schedule property is the exclusive property of the 1st defendant / civil revision petitioner, who had purchased the same out of his self acquisitions. *Whether the C schedule property is personal acquisition of the 1st defendant or whether it had been purchased by Subramania Sharma in the name of the 1st defendant* would necessarily have to be dealt with at the time of Trial. This especially so in the light of the pleadings in paragraph No.4 of the plaint. In the said paragraph, as pointed above, the plaintiff has specifically pleaded that Subramania Sharma had purchased the property in the name of the first son out of the income



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that he got from the A schedule property. This being a triable issue, I am not in a position to come to the rescue of Mr.Umapathi's client.

13. Accordingly, the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

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Index : Yes/No
Internet : Yes/No
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To

The Principal Subordinate Judge,
Coimbatore.



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V.LAKSHMINARAYANAN, J.

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