



C.R.P.(PD).No.4213 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.4213 of 2024

1. Minor M.Kanushka
2. Minor M.Bala Hariprasath

Represented by their mother
M.Sasikala

.. Petitioners

Versus

1. Govindappillai
2. Krishnaraj
3. Murali Krishnan
4. Meenakshi
5. Devi
6. Savitha
7. Boopathi
8. Ezhumalai
9. Gomathi

10. The Sub-Registrar,
Senji,
Villupuram.

.. Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to direct the Principal District and Sessions Court, Villupuram to take on file and number the plaint in un-numbered O.S.No..... of 2024 [Filing No.OS/206/2024 (C.N.R.No.TNVP010014552024)] on the file of



C.R.P.(PD).No.4213 of 2024

the learned Principal District Judge, Villupuram and dispose the case as expeditiously as possible, by allowing this Civil Revision Petition.

For Petitioners : Mr.E.Tharun Roshan

For Respondents : Mr.C.Sathish,
Government Advocate, for R10

ORDER

The Civil Revision Petitioners are the plaintiffs in an unnumbered Original Suit on the file of the Principal District and Sessions Judge at Villupuram. They presented the suit through their mother as they are minors. They sought for partition and separate possession of their 1/9th share and to set aside the partition deed that was entered into between the respondent Nos.1 to 5 as the sharing was unfair and for setting aside the sale deed that was executed on the basis of the partition deed entered into in the year 2017.

2. The suit was returned with an endorsement that it is not maintainable since the third respondent/defendant, who is a coparcener to the partition deed, is alive. The third respondent/defendant is the father of the petitioners/plaintiffs. On the date of entering into the partition deed of the year 2017, the petitioners/plaintiffs were aged about 5 years and 7 years



C.R.P.(PD).No.4213 of 2024

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respectively. When the plea is that the partition deed itself was unfairly entered into between the coparceners, a minor can certainly present a suit seeking for setting aside the partition deed and for reopening the partition. It is only if the petitioners/plaintiffs had accepted the partition deed, the issue of presenting the suit against the other coparceners, being barred, arises. See, ***Ratnam Chettiar Vs.S.M.Kuppuswami Chettiar***, AIR 1976 SC 1 (Per Syed Murtaza Fazl Ali, J.,)

3. On the contrary, the specific plea is that the partition deed was entered into against the interest of the minors. That being the situation, the return that was sought for by the Registry of the District Court at Villupuram does not answer the requirement of law.

4. Furthermore, this Court in ***Selvaraj Vs. Koodankulam Nuclear Power Plant India Limited, represented through its Director, 2021 SCC OnLine Mad 2514***, directed that a Registry of a Court which is performing only ministerial acts, cannot ask questions which have to be answered by the Court on the judicial side. The specific plea in the plaint is that the suit



C.R.P.(PD).No.4213 of 2024

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properties are ancestral properties. If that be the situation, by the very birth, the petitioners/plaintiffs are entitled to a share.

4. Taking advantage of their minority, if they have not been granted equal share, that they are otherwise entitled to, a minor can approach the Court and seek for setting aside the same. That being the position of law, the return sought for by the Registry of the District Court at Villupuram and necessarily has to be set aside.

5. Consequently, this Civil Revision Petition is ordered. The learned Principal District and Sessions Judge, Villupuram is directed to number the plaint in Filing No.OS/206/2024 (C.N.R.No.TNVP010014552024), if it is otherwise in order and issue summons to the respondents/defendants. No costs.

22.10.2024

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

Note to the Registry :- The original plain that is filed



C.R.P.(PD).No.4213 of 2024

***along with this Civil Revision Petition shall be returned
to the learned Counsel for the petitioners, after
obtaining necessary endorsement.***

To

The Principal District and Sessions Judge,
Villupuram.



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C.R.P.(PD).No.4213 of 2024

V.LAKSHMINARAYANAN, J.

grs

C.R.P.(PD).No.4213 of 2024

22.10.2024