



C.R.P.(PD)No.4203 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **21.10.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

**C.R.P.(PD)No.4203 of 2024
and C.M.P.No.23294 of 2024**

1.Sumathi

2.Balakrishnan

.. Petitioners

Vs

1.Malaiyammal

2.Angamuthu

3.Ramkumar

4.Lakshmanan

5.Jeevanandham

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 19.08.2024 in I.A.No.2 of 2023 in O.S.No.224 of 2022 on the file of the Subordinate Court at Udumalpet.



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For Petitioners : Ms.K.Vijayalakshmi
for M/s.Dass and Viswa Associates

ORDER

This civil revision petition arises against the order passed by the learned Subordinate Judge at Udumalpet in I.A.No.2 of 2023 in O.S.No.224 of 2022 dated 19.08.2024.

2. O.S.No.224 of 2022 is a suit for partition and separate possession. The claim of the plaintiffs is that the property had been purchased by one Subbaboyan in the year 1961. On his death, the property devolved on his wife Subbammal, his two daughters and one son namely, Malaiyammal, Velliyangirinathan and Thirumoorthyammal. As the shares of the plaintiffs were not given, they came forth with the suit for partition.

3. The defendants 1 and 2 moved an application for rejection of the plaint in I.A.No.2 of 2023. The plea of the defendants is that the 1st defendant, who is the daughter of the only son of Subbaboyan and Subbammal namely, Velliyangirinathan, had married one Dhanabal, son



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of Malaiyammal. From the wedlock, they had a child and the said Dhanabal, i.e. son of the 1st plaintiff abandoned her and the child, constraining them to initiate the proceedings for restitution of conjugal rights. Despite the order passed by the learned trial Judge allowing the application, the said Dhanabal did not comply with the decree.

4. Pleading that the plaintiffs had abandoned the property and therefore, they are not entitled to maintain the suit, the defendants 1 & 2 moved an application for rejection of the plaint. After receipt of a counter from the plaintiffs, the learned Subordinate Judge proceeded to dismiss the said application. Hence, this revision.

5. Heard Ms.K.Vijayalakshmi for Mr.T.Arockia Dass for the civil revision petitioners.

6. Ms.K.Vijayalakshmi pleads that the plaintiffs had abandoned the property and therefore, they are not entitled to make the claim for partition after a long lapse of time. She further pleads that the daughters of Subbaboyan and Subbammal namely, the plaintiffs had given up their right over the property by way of an oral release deed and hence, there is no cause of action for the suit and the suit deserves to be rejected.



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7. I have carefully considered the submissions of

Ms.K.Vijayalakshmi and have gone through the records.

8. The relationship between the parties is not in dispute. The suit has been presented by the daughter of the person who had purchased the property in the year 1961. Her father had passed away in the year 2020. The succession to the property opens on the death of the owner. The suit having been filed within a few years of the death of Velliyangirinathan, the sharer, it cannot be said to be barred by time. Furthermore, the plea that the plaintiffs have abandoned the property is a matter which has to be gone into only at the time of trial. The plaintiffs have specifically pleaded that they are in joint possession of the property along with the defendants.

9. For the purpose of rejection of the plaint, the averments made in the plaint has to be taken to be true. The defence of the civil revision petitioners cannot be looked into at this stage. A reading of the plaint shows that succession opens on the death of Subbaboyan, Subbammal, Thirumoorthyammal and Velliyangirinathan. When the plaint discloses the cause of action, I am not in a position to accept the plea of



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Ms.K.Vijayalakshmi, which she has to necessarily prove at the time of trial.

10. With the above observations, the civil revision petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

21.10.2024

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

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To

The Subordinate Judge at Udumalpet.



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V. LAKSHMINARAYANAN,J.

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