



C.R.P.(PD).Nos.4077, 4080 and 4081 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).Nos.4077, 4080 and 4081 of 2019
and CMP.No.26720 of 2019

CRP (PD) No.4077 of 2019

1.K.Thiagarajan
2.R.Suguna
3.Dilli Balaji
4.S.Rani
5.P.Shanthi

... Petitioners

vs.

1.Venkatesan
2.H.Prema
3.R.Prakasam
4.S.Kalaimani
5.N.Ramesh
6.R.Vijayalakshmi
7.The Sub Registrar,
Wallajahpet.
8.The Tahsildar,
Wallajah Taluk, Wallajah.
9.The Revenue Divisional Officer,
Ranipet.
10.The District Collector,
Vellore District, Sathuvachari,
Vellore.

... Respondents



C.R.P.(PD).Nos.4077, 4080 and 4081 of 2019

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the order dated 20.09.2019 and made in I.A.No.8 of 2019 in O.S.No.14 of 2019 on the file of the District Munsif cum Judicial Magistrate No.1, Wallajahpet.

For Petitioners : Ms.J.Chitra

For Respondents :Mr.V.Jeevagiridharan
Additional Government Pleader
for R7 to R10
Mr.K.Venkatasubban
for M/s.Sarvabhuaman Associates
for R1
No Appearance for R2 to R6

CRP (PD) No.4080 of 2019

1. K.Thiagarajan
2. R.Suguna
3. Dilli Balaji
4. S.Rani
5. P.Shanthi

... Petitioners

vs.

The Sub Registrar,
Sub Registrar Office,
Wallajahpet.



C.R.P.(PD).Nos.4077, 4080 and 4081 of 2019

... Respondent

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Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the order dated 20.09.2019 and made in I.A.Nos.7 and 3 of 2019 in O.S.No.14 of 2019 on the file of the District Munsif cum Judicial Magistrate No.1, Wallajahpet.

For Petitioners : Ms.J.Chitra

For Respondent :Mr.V.Jeevagiridharan
Additional Government Pleader

CRP (PD) No.4081 of 2019

1.K.Thiagarajan
2.R.Suguna
3.Dilli Balaji
4.S.Rani
5.P.Shanthi

... Petitioners

vs.

1.Venkatesan
2.H.Prema
3.R.Prakasam
4.S.Kalaimani
5.N.Ramesh
6.R.Vijayalakshmi



C.R.P.(PD).Nos.4077, 4080 and 4081 of 2019

... Respondents

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Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the order dated 20.09.2019 and made in I.A.No.8 of 2019 in O.S.No.14 of 2019 on the file of the District Munsif cum Judicial Magistrate No.1, Wallajahpet.

For Petitioners	: Ms.J.Chitra
For Respondents	:Mr.C.Tickkonber for M/s.R.Raja Rajan for R1 and R2 No Appearance for R3 to R5 M/s.P.Mani for R6

COMMON ORDER

These Civil Revision Petitions are filed challenging the order passed by the Court below dismissing the amendment application filed by the petitioners/plaintiffs seeking to amend the plaint and interlocutory applications.

2. The petitioners herein filed a suit in O.S.No.14 of 2019 on the file of the District Munsif cum Judicial Magistrate No.1, Wallajahpet, seeking



declaration that various sale deeds mentioned in the prayer were null and void not binding upon the plaintiffs and also declaration that Will dated 10.03.2003 was null and void and not binding on the plaintiffs. The petitioners also consequently prayed for injunction restraining the defendant from interfering with the possession and enjoyment of the suit property.

3. In the plaint averment it was stated by the petitioners that the suit property originally belonged to one Duraisamy Naicker and he died on 27.11.1941 leaving behind his legal heirs namely Kannappa Naicker, Subramani Naicker and Tiruvengadam Naicker. It was further stated that Subramani Naicker died without any issues and properties were divided between one Tiruvengadam Naicker and Kannappa Naicker by registered partition deed dated 17.12.1941. The registered partition deed dated 17.12.1941 was filed along with plaint. It was further stated by the petitioner that said Kannappa Naicker was in possession and enjoyment of the suit property without any interference from anybody and he died on 12.07.1971 leaving behind one Ranganathan and plaintiffs 1, 4 and 5. It was further stated that Tiruvengadam Naicker died on 03.08.1982 leaving behind his wife



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Saradammal and the said Saradammal died on 24.08.2012 without any issues.

Thus the plaintiffs claimed that they were entitled to succeed to the estate of Tiruvengadam Naicker as his Class II legal heirs.

4. Subsequently, the petitioners/plaintiffs filed amendment application seeking to amend the plaint and two other interlocutory applications in I.A.Nos.3 and 4 of 2019. I.A.No.3 of 2019 was filed seeking injunction restraining the Sub Registrar from registering documents. I.A.No.4 of 2019 was filed seeking injunction against private defendants.

5. In the affidavit filed in support of the amendment application, it was stated by the petitioners that in the registered partition deed entered between the Kannappa Naicker and Tiruvengadam Naicker dated 17.12.1941, the suit property was allotted to the share of Kannappa Naicker and the same was wrongly mentioned in the plaint and in the affidavit filed in support of the interlocutory applications as if it was allotted to the share of Tiruvengadam Naicker and plaintiffs were entitled to succeed to his estate as Class II heirs. Therefore, the petitioner filed amendment application to delete the averments in the plaint as if, they succeeded to the suit property as Class



II 2 heirs of Tiruvengadam Naicker and to include averments that the property was allotted to share of Kannappa Naicker under registered partition deed dated 17.12.1941.

6. The said amendment application was dismissed by the Court below on the ground that the petitioners failed to give any reason for the failure to plead correct averments in the original plaint. It was also further observed by the Court below that based on the averments found in the plaint, interim order was obtained by the petitioners and therefore, they are not entitled to amend the averments.

7. It is seen from the affidavit filed in support of the amendment application that the petitioners claimed that the suit property was allotted to share of Kannappa Naicker under 1941 registered partition deed between Kannappa Naicker and Tiruvengadam Naicker. The said registered document was filed along with the plaint as document No.1. While tracing the title of the suit property, the petitioners appeared to have made wrong averment. Now, they want to amend the averment in the plaint as well as the affidavit in support of the interlocutory application so as to plead that as per the recitals



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found in the registered partition deed dated 17.12.1941, the suit property was allotted to Kannappa Naicker. The said partition deed was filed along with plaint. In such circumstances, the amendment sought for will not alter the character of the suit and cause of action for filing the suit. The amendment sought to be introduced is also only based on 1941 partition deed which was relied on in the plaint. In such circumstances, the trial Court committed an error in dismissing the amendment application.

8. In view of the discussion made in the earlier, the impugned orders passed by the Court below are set aside. The amendment applications filed by the revision petitioners are allowed. It is needless to say the respondents are entitled to file additional written statement in suit and additional counter in interlocutory application.

9. Accordingly, these Civil Revision Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

05.01.2024

Index : Yes / No
Speaking order : Yes / No

8/10



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Neutral Citation : Yes / No

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To

The District Munsif cum Judicial Magistrate No.1,
Wallajahpet.



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S.SOUNTHAR, J.

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