



C.R.P.(PD).No.749 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.749 of 2017

and

C.M.P.No.3688 of 2017

1.Balakrishnan

2.Selvakumari

... Petitioners

VS

1.Panner Selvam

2.Selvaraj

3.Viruthasambal

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside order and Decreetal Order in I.A.No.1182 of 2016 in O.S.No.173 of 2013, on the file of III Additional District Sessions Judge, Cuddalore, at Virudhachalam, dated 17.11.2016.

For Petitioners : Mr.Avinash Wadhwant



C.R.P.(PD).No.749 of 2017

for Ms.V.Srimathi

For R1 : Mr.J.Antony Jesus

For R2 and R3 : Dismissed vide Court

ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the amendment application filed by the revision petitioners.

2. The 1st respondent herein filed a suit for partition claiming 5/16 share in the suit properties. The petitioners, who were arrayed as defendants 1 and 4 in the suit filed an application seeking amendment of the plaint for inclusion of one of the item of the property, which was not included in the plaint schedule properties.

3. According to the revision petitioners, the property situated at Sathamangalam Village, Virudhachalam Taluk in Natham Survey No.179/5 and the building put up by father of the parties thereon was not included in



the plaint schedule by the 1st respondent and the same is also available for partition. Therefore, they filed an application seeking amendment of the plaint so as to include the said property as Item No.44 in the plaint schedule.

4. The said amendment application was resisted by the 1st respondent by filing counter affidavit stating that the property mentioned by the petitioners was sold by father of the parties, even during his life time and therefore, the same was not available for partition.

5. Admittedly, the father of the parties is not alive. After death of father of the parties, his estate/share in the suit properties devolved on all the parties to the suit. In such circumstances, the property already sold by father of the parties is not available for partition among the present parties to the litigation, who are all heirs of deceased Srinivasa Udayar. In such circumstances, the Court below rightly came to the conclusion that the property sought to be included in the plaint schedule by way of amendment was not available for partition and hence, rightly dismissed the amendment application. Therefore, I do not find any illegality or irregularity in the order passed by the Court



C.R.P.(PD).No.749 of 2017

below.

WEB COPY

6. Accordingly, the Civil Revision Petition stands dismissed. No costs.

Consequently, the connected civil miscellaneous petition is closed.

02.01.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm



C.R.P.(PD).No.749 of 2017

To

WEB COPY

The III Additional District Sessions Judge,
Cuddalore, at Virudhachalam.



WEB COPY



C.R.P.(PD).No.749 of 2017

S.SOUNTHAR, J.

dm

C.R.P.(PD).No.749 of 2017

02.01.2024