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C.R.P. No.4649 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P. No.4649 of 2024

S.Praveenraj

Petitioner

Vs

1.Tmt.Indira @ Indirasivam

2.S.Sivaprashanth

3.Mrs.Rathinammal

Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to direct the Trial Court to number the petitioner's suit in un-numbered O.S.No. of 2024(Cr.No.5235/2024) and set aside the order passed in un-numbered OS.No. /2024(Cr.No.5235/2024) dated 13-09-2024 by the Principal District Court, Dharmapuri and thus render justice

For Petitioner : Mr.R.Sethuvarayar

ORDER

This Civil Revision Petition challenges the order passed by the learned Principal District Judge at Dharmapuri in unnumbered O.S.No. of 2024 (CR.No.5235 of 2024), dated 13.09.2024.



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2.The civil revision petitioner is the plaintiff in the suit. It is the case of the civil revision petitioner that one K.P.Srisivam had purchased the property in his name in Document No.499 of 2009 on 29.08.2009 and had executed a Sale Deed in the name of the 1st defendant on 30.09.2010. He also stated that Srisivam had executed several documents in the name of the 1st defendant and had passed away in the year 2022.

3.The plaintiff pleaded that the schedule mentioned properties are Hindu undivided joint family properties and he was in joint possession of the same along with the defendants. The 1st defendant is his mother. The 2nd defendant is his sibling and the 3rd defendant being his grand mother. Hence, he sought for partition and separate possession.

4.When the suit was presented, the Registry seems to have raised doubt as to how the suit is maintainable when the 1st defendant is alive. Therefore, the matter was posted before Court for arguments. After arguments, the learned trial Judge, without even numbering the plaint, rejected the same stating that there is no cause of action for the suit. Hence, this revision.



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5.I have heard Mr.R.Sethuvarayar, for the civil revision petitioner and have gone through the records.

6.It is settled position of law that while dealing with Order VII Rule 11 of CPC., the averments made in the plaint and documents filed therewith alone must be taken into consideration. In this case, the plaint averments proceed that the suit properties are joint family properties and late Mr.K.P.Srisivam was the Kartha. It alleges, from and out of the joint family assets, late Mr.K.P.Srisivam had purchased the property in the name of his wife. Nowhere in the plaint it has been conceded that the purchase of the property in the name of his wife was for her benefit. The presumption that the learned Judge has drawn is, one which is entitled to do so, only after receiving a written statement, oral and documentary evidence.

7.I am not able to understand how the learned Judge even before the pleadings are completed and evidence is recorded came to a finding that the property had been purchased by the father for the benefit of his wife and that the plaintiff does not have the *locus standi* to question the same. In fact, both these conclusions by themselves are questionable.



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10.Hence, I am constrained to interfere with the order dated 13.09.2024.

The same is set aside. The Civil Revision Petition stands allowed. The learned Principal District Judge, Dharmapuri shall number the plaint, if it is otherwise in order and issue summons to the defendants. No Costs.

21.11.2024

Index : Yes/No

Neutral Citation : Yes/No

Neutral Citation : Yes/No

Speaking/Non-Speaking Order

ssr

To

The Principal District Court, Dharmapuri.



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V. LAKSHMINARAYANAN, J.

SSR

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