



C.R.P. No.3871 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P. No.3871 of 2019
& CMP No.25566 of 2019

1.A.Seethalakshmi
2.A.Anbumani
3.A.Karthikeyan
Petitioners

Vs

1.A.Usha
2.A.Geetha
3.R.Janaki
4.R.Vivekanandan
5.R.Balasubramanian
6.R.Ajay
7.K.S.R.Jewellers
Represented by its Propreitor
Sri S.Pathuchand, Carrying on business
No.120, Bazaar Street,
Chengalpattu Town and Taluk.
8.Ayub Khan



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9.Shanthiammal

10.Ani Fathima

11.Dr.Suresh Kumar

12.Dr.Karthik

13.Harikrishnan

14.Saravanan

15.Edwin Isrel

16.C.Pandiyan

17.P.Herbert

18.Joseph Raj

19.Michel Anto

20.G.Sampath

21.Shajeetha

22.Ansar

23.A.Bhuvaneswari
Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 09.04.2019 in I.A.No.691 of 2018 in O.S.No.190 of 2016 on the file of the District Munsif, Chengalpattu.



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For Petitioners : Mr.K.S.Vaithianathan

For Respondents : Ms.V.Ananthi for
Mr.K.Mohana Murali for R1 to R6

R7 to R10, R14, R15, R18 & R19
Served (No Appearance)

R11 to R13, R16, R17, R20 to R23
(Not Ready in Notice)

ORDER

This Civil Revision Petition arise against the order passed by the learned District Munsif at Chengalpattu in I.A.No.691 of 2018 in O.S.No.190 of 2016, dated 09.04.2019. The civil revision petitioners are defendants 1 to 3. One Arumainathan presented O.S.No.190 of 2016 for the following reliefs:

(a) To declare the Family Arrangement document dated 05.11.2015 bearing document No.13473/2015 on the file of the S.R.O. Chengalpttu between the defendants 1 to 3 with regard to the suit properties as Null and void.

(b) Granting Permanent injunction against the defendants 1 to 3, restraining them, their men, agents and servants from in any way



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collecting the rent from the tenants-D.4 to D.19 based on incorrect

Registered Family Arrangement Document (bearing document No.13473 of 2015 on the file of the S.R.O. Chengalpattu)

2.It is the case of Arumainathan that the suit property belonged to one Ayyakannu Thambiran. He had settled the property in favour of his wife Jagathambal. Jagathambal had in turn registered a “Will” in favour of the said Arumainathan bequeathing the entire property in his name. He pleaded that Jagathambal passed away and therefore, he had become the absolute owner of the property. Ignoring the right of Arumainathan, his sons viz., the defendants 1 to 3 entered into to a family arrangement on 05.11.2015. It was registered as Document No.13473 of 2015 on the file of the Sub Registrar at Chengalpattu. Hence, he presented the suit for the aforesaid reliefs.

3.The defendants 1 to 3 entered appearance. The 2nd defendant filed a detailed written statement which was adopted by defendants 1 & 3. The defendants admitted that Ayyakannu Thambiran had executed a Settlement Deed in favour of Jagathambal. However, they argued that the said document is only one of the life estate in favour of Jagathambal and not an absolute



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one. Therefore, they pleaded that Jagathambal could not have bequeathed the property over which she only had a limited interest.

4. Pending the suit, Arumainathan passed away. His daughters and grand children filed an application to bring themselves on record as the legal representatives of the deceased Arumainathan. In addition, they wanted to array one Bhuvaneswari, daughter of Arumainathan and Seethalakshmi as the defendants to the suit. The said application was opposed by the defendants 1 to 3, pleading that as one of the suit properties is within the jurisdiction of this Court, it requires a probate. They pleaded, without a certificate of probate, the petition is not maintainable.

5. The learned Trial Judge, after hearing the petitioners and the respondents, allowed the application. Hence this revision.

6. Heard Mr.K.S.Vaithianathan, learned counsel for the civil revision petitioners and Ms.V.Aanthi, learned counsel for the respondents.

7. Mr.K.S.Vaithianathan, argues that since the respondents are basing



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their right on the basis of a “Will” dated 15.09.2014, unless and until the “Will” is probated, they are not entitled to come on record.

8.Ms.V.Ananthi, points out that the learned Trial Judge has appreciated this fact and only thereafter, he came to the conclusion that the daughters are entitled to come on record along with the other beneficiaries in the “Will”. Hence, she seeks for confirmation of the order of the Trial Court.

9.I have carefully considered the submissions of Mr.K.S.Vaithianathan, and Ms.V.Ananthi. I have gone through the records.

10.There is no dispute that Arumainathan had several children of whom his daughters are one A.Usha and A.Bhuvaneswari. By virtue of being the daughters, they are certainly entitled to come on record. The daughters succeed to the estate on the death of Arumainathan. Hence, they are entitled to represent the estate. Insofar as Mr.Vivekanandan, Mr.Balaubramanian and Mr.R.Vijay are concerned, they are the grandsons of Arumainathan. For the mere fact that the “Will” has not yet been probated does not mean that the aforesaid persons cannot come on record.



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11. Similarly, the grandsons want to come on record only to continue the proceedings as the legal representative of Arumainathan. They are not taking any independent claim over the property. In terms of Section 2(11) of the Code of Civil Procedure, even an intermeddler of the property is treated as a legal representative. It is true that legal heirs are legal representatives but all legal representatives need not be legal heirs. By coming on record, the respondents 1 to 6 and 23 are only representing the estate of Arumainathan. They have to continue the suit on the basis of pleadings set-forth by Arumainathan. The Code does not permit the legal representatives to take higher plea than that could have been taken by the deceased.

12. That being the position, I do not find any error in the order passed by the learned District Munsif at Chengalpattu. The order in I.A.No.691 of 2016 in O.S.No.190 of 2016, dated 09.04.2019 stands confirmed. At this stage both Mr.K.S.Vaithianathan, and Ms.V.Ananthi, state that on an application filed under Clause 13 of the Letters Patent, O.S.No.190 of 2016 has been transferred to the file of this Court. Therefore, respondents 1 to 6 and 23 are permitted to file the amended plaint copy before this Court and after the records are received and the suit is renumbered.



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V. LAKSHMINARAYANAN, J.

SSR

13.This Civil Revision Petition stands dismissed. No Costs.

20.11.2024

(2/2)

Index : Yes/No

Neutral Citation : Yes/No

Neutral Citation : Yes/No

Speaking/Non-Speaking Order

SSR

To

The District Munsif, Chengalpattu.

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