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C.R.P. No.4673

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2024

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THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P. No.4673 of 2024
& CMP No.26144 of 2024

Selvam

Petitioner

Vs

Vaitheeswari

Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decreetal order dated 12.04.2024 passed in I.A.No.161 / 2023 in O.S.No. 137 / 2022 by the learned Principal Subordinate Judge at Kallakurichi and Reject the Plaint.

For Petitioner : Mr.N.Vijayakumar for
Mr.S.Ramajayam

ORDER

This Civil Revision Petition against the order of the learned Principal Subordinate Judge at Kallakurichi in I.A.No.161 of 2023 in O.S.No.137 of 2022, dated 12.04.2024.



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2.The civil revision petitioner is the 1st defendant in the suit. O.S.No.137 of 2022 has been presented for partition and separate possession. There is no dispute in the relationship between the parties. The plaintiff is the daughter of the 1st defendant and defendants 2 and 3 are her siblings. Pleading that the ancestral properties of their family had been allotted to the father, pursuant to a Partition Deed dated 04.04.1991, she claimed, she is entitled to $\frac{1}{4}$ share and presented the suit.

3.On being served with the summons, the defendants had entered appearance. The 1st defendant filed an application for rejection of plaint. He admits to the fact that it is by virtue of document dated 04.04.1991, he obtained the property. He pleaded that, by virtue of the partition, the properties became his self-acquisitions. Therefore, he sought for rejection of plaint, on the ground there is no cause of action. The plaintiff filed a counter stating that the properties, which were covered in the Partition Deed dated 04.04.1991, are all ancestral properties and therefore, cannot be treated as self-acquired of the father. The learned Subordinate Judge, Kallakurichi agreed with the plaintiff and dismissed the application. Hence, this revision.

4.I Heard Mr.N.Vijayakumar, for Mr.S.Ramajayam, for the civil revision petitioner.



5.Mr.Vijayakumar, reiterates the contentions raised before the Trial Court. He pleads that since the properties are self-acquisitions, Section 8 of the Hindu Succession Act will apply and therefore, the plaintiff can at best claim a share only on the death of the father in case he died intestate and cannot make a claim to the property when the father is alive.

6.I carefully considered the submissions of Mr.Vijayakumar.

7.At the outset, I should point out that, whether the parties are ancestral or self-acquisition, would have to be gone into only at the time of trial. Both sides admit the Partition Deed dated 04.04.1991. If the properties covered by the Document dated 04.04.1991 are ancestral properties, then by virtue of the partition deed that is entered between the defendant and his other coparceners, the ancestral properties will not lose their character and become self-acquisitions in the hands of the father. On the father obtaining the property, a joint family is created amongst the members of his family viz., the plaintiff, defendants 2 and 3 and himself.

8.In any event, at the time of considering an application for rejection of plaint, I need not enter into a final finding with respect to the said document as it is the matter for trial.



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V. LAKSHMINARAYANAN, J.

SSR

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9.The learned Trial Judge has correctly appreciated the position of law and has held whether it is ancestral or self-acquisition will be gone into at the time of the trial and it is not a ground for rejection of plaint.

10.I concur with the view of the learned Principal Subordinate Judge at Kallakurichi and accordingly, this civil revision petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

22.11.2024

Index : Yes/No

Neutral Citation : Yes/No

Neutral Citation : Yes/No

Speaking/Non-Speaking Order

SSR

To

The Principal Subordinate Judge at Kallakurichi.

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