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C.R.P.(PD).No.4804 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2024

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THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.4804 of 2024
and
C.M.P.No.26878 of 2024

Sai Jeganathan

... Petitioner

..Vs..

1.Sai Chandralekha

2.Sai Dhara

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 08.07.2024 made in I.A.No.3 of 2022 in O.S.No.6 of 2020 on the file of the learned District Judge, Karaikal and to allow the Civil Revision Petition.

For Petitioner : Ms.H.Kavitha

ORDER



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This Civil Revision Petition challenges the order of the learned District Judge at Karaikal in I.A.No.3 of 2022 in O.S.No.6 of 2020 dated 08.07.2024.

2. O.S.No.6 of 2020 is a suit for partition and separate possession. The plaintiffs are elder siblings of the defendant/civil revision petitioner.

3. It is the case of the plaintiffs' that the properties originally belong to one Sowrirajalu Chettiar, Son of Krishnasamy Chettiar. During his lifetime, he had gifted the property by way of Notaire deed to his eight children. The father of the parties to the suit, was the first son. The plaintiffs' plea is that as per the French Law, then prevailing amongst Hindus in Pondicherry, the properties that were acquired by P.K.S.Krishnasamy Chettiar, [the father of the plaintiffs' and defendant], became the property of P.K.S.Krishnasamy Chettiar and his wife Janaki Ammal. There is no dispute that P.K.S.Krishnasamy Chettiar passed away on 18.08.1958 and his wife Janaki Ammal passed away on 17.01.2018.



4. The plaintiffs' plea that on the death of Janaki Ammal, her share devolved on her legal heirs, namely, the plaintiffs and the defendant. Since the defendant did not agree for amicable settlement, they came forward with the suit for partition of their 2/3rd share.

5. The defendant entered appearance and has also filed a detailed written statement. Thereafter, he took out an application for rejection of plaint. The plea of the defendant is that on account of the Notaire deed executed by Sowrirajulu Chettiar in favour of P.K.S.Krishnasamy Chettiar, he later became the absolute owner of the property.

6. When P.K.S.Krishnasamy Chettiar died in the year 1958, the residence of Pondicherry governed by the French Law. As per applicable French Law, the properties of the father would go to his sons and the properties of the mother would go to the daughters. Therefore, his plea is that, on the death of P.K.S.Krishnasamy Chettiar, he became the absolute owner of the property. The fact that the Hindu Succession Act came into force from 01.10.1963, would not affect him, on account of the fact that he



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had become the owner of the property, the moment succession opened on 18.08.1958.

7. The plaintiffs' resisted this application of rejection of plaint, numbered as I.A.No.3 of 2022, on the ground that the plaintiffs' are claiming the property since it devolved on both the mother and father. They pleaded that they do not agree that the property became the exclusive property of P.K.S.Krishnasamy Chettiar on execution of the Notaire deed. Since their mother also had a share and as she was alive till 17.11.2018, the plaintiffs' stated there is a cause of action for the suit.

8. The learned District Judge, Karaikal on the basis of the affidavit, petition and counter, came to a conclusion that it is not a case for rejection of plaint and dismissed the same.

9. Aggrieved by the same, the sole defendant is on revision before me.

10. I heard Ms.H.Kavitha for the civil revision petitioner.



11. Ms.H.Kavitha relying upon the Coramandel French Hindu Law, which was applicable to Hindus till the extension of the Hindu Succession Act to Puducherry, argues that, as the property was given absolutely to P.K.S.Krishnasamy Chettiar by his father, on his death, the property vested only with the son and the daughters cannot have any right over the same. Therefore, she urges there is no cause of action for the suit.

12. I have carefully considered the submissions of Ms.H.Kavitha.

13. For the purpose of rejection of plaint, I have to go only as per the averments made in the plaint. The defense that has been raised by the defendant, however sterling it be, cannot be looked into at that stage. It is the clear case of the plaintiffs' that on execution of the donation cum partition deed by Sowrirajulu Chettiar in favour of P.K.S.Krishnasamy Chettiar, the property devolved equally on P.K.S.Krishnasamy Chettiar and his wife Janaki Ammal. Whether this is the position of law that, which prevailed at that point of time, is a matter, which has to be gone into at the time of trial. The plaint averments in III (1) specifically pleads that, whatever the property



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was acquired by the husband, became the property of himself and his wife.

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14. The suit is predicated on this pleading. If I have to take this statement to be true, then, the succession opened in so far as the property of Janaki Ammal is concerned, only when she passed away on 17.01.2018. I have to presume that the Janaki Ammal had a share on account of the averments made in the plaint. If that be the position, the plea, that is raised by Ms.H.Kavitha, is a matter, which has to be addressed, after the trial is concluded in the suit. It cannot be a plea of rejection of plaint. Therefore, I have to confirm the order passed by the learned District Judge at Karaikal, not for the reasons given by the learned Judge in the order, but for the reasons set forth above.

15. I notice that the parties to the suit are all senior citizens. The civil revision petitioner/sole defendant, who is the younger sibling, is himself aged about 72 years old. Interest of justice requires that the suit be disposed of during the life time of the parties. Therefore, there shall be a direction to the learned District Judge at Karaikal to dispose of O.S.No.6 of 2020 on or



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before 30.04.2025.

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16. With the above direction, the Civil Revision Petition is disposed of. No costs. Consequently, the connected miscellaneous petition stands closed.

03.12.2024

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Index : Yes

Internet : Yes

Neutral Citation Case: Yes/No

To

1. The District Judge, Karaikal.

V.LAKSHMINARAYANAN, J.

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