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C.R.P.No.4949 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.4949 of 2024 &
CMP.No.27846 of 2024

D.Munuswamy

.. Petitioner

Versus

D.Raghavan (Died)

1.Chandra

2.Ranjini

3.Ramu

4.Bharathi

5.Nirmala

Govindammal (Died)

7.Logammal

7.S.Lakshmi @ Vijaya Lakshmi

8.Santha

9.D.Janarthanan

10.D.Govarthanan

11.D.Swarnamugi

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 24.10.2024 passed in I.A.No.6 of 2024 in O.S.No.41 of 2005 on the file of the District Munsif Court at Sholinghur, Ranipet District.

For Petitioner : Mr.P.Manikannan



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ORDER

This civil revision petition is at the instance of the first defendant.

The suit is one for partition and separate possession.

2. The plaintiffs took out an application to introduce a document. This was in exercise of Order VII Rule 14(3) of the Code of Civil Procedure. The document is a patta obtained by the father of the original plaintiff and the defendant, namely, one Duraisamy Naidu. It is a joint patta bearing patta No.527. As the same had not been filed during the time of trial, an application was filed to receive the same. This application was received as I.A.No.6 of 2024.

3. The application was opposed by the defendants arguing that the matter had been pending from 2005 onwards and nothing prevented the plaintiffs from filing the document during the said period. They urged that as no justifiable reasons had been given to receive the document, the petition deserves dismissal. The first defendant, had agitated that he alone has rights over the self acquired property, which is item No.1 of the



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schedule property. He agreed that the plaintiffs has a share in the ancestral properties. It was urged that the patta granted in favour of Duraisamy Naidu is not an individual patta, but a joint patta and therefore, it cannot be received in evidence.

4. The learned Trial Judge came to a conclusion that there is no dispute that the property situated in S.No.501/37 is an ancestral property. The learned Trial Judge had granted liberty to the defendants to cross examine the plaintiffs on the document and allowed the application. Hence, this revision.

5. Mr.P.Manikannan urges that the evidence was closed years ago and receiving the said document after such a long lapse of time should not be permitted. He argues that the patta stands in the name of Duraisamy Naidu and Kannaiah Naidu, and the legal heirs of Kannaiah Naidu were not parties to the suit proceedings. Therefore, receiving the document might create confusion in the suit. Hence, he pleads that the Trial Judge committed an error in receiving the document.



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6. I have carefully considered the submissions of Mr.P.Manikannan and gone through the records.

7. Insofar as the plea that the learned Judge ought not to have received the document on account of the fact that it is a joint patta is concerned, I should point out that the suit relates to partition of the properties belonging solely to Duraisamy Naidu. It is not in dispute that Duraisamy Naidu and Kannaiah Naidu were joint owners of the property.

8. If the suit is decreed and this property is allotted to any one of the sharers, then, such a sharer should institute a suit for partition against Kannaiah Naidu's legal representatives. For the mere fact, Mr.Kannaiah Naidu had half share in the suit property, does not mean, the legal heirs of Kannaiah Naidu also have to be made as parties to the suit. In a suit for partition relating to Duraisamy Naidu's property, the presence of the legal heirs of Kannaiah Naidu is neither necessary nor proper. Only the legal representatives of Duraisamy Naidu have to be impleaded as parties.

9. In any event, allowing the application under Order VII Rule 14(3) of the Code of Civil Procedure is a discretionary order by the learned Trial



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Judge. The learned Trial Judge has felt that this document will be essential to enable her to dispose of the suit in a proper manner. Unless and until, the discretion has been used in an arbitrary or capricious manner, it is not susceptible for interference in exercise of Article 227 of the Constitution of India. Procedural orders are normally not interfered with. I do not find any error in the order passed by the learned Trial Judge.

10. The apprehension of Mr.P.Manikannan that the document being a joint patta, it will affect the rights of the parties is unfounded. It is always open to Mr.P.Manikannan's client to confront the plaintiffs, when the document is introduced, during the course of evidence and cross examine the plaintiffs to their heart's content.

11. In the light of the above discussion, this civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

09.12.2024

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Index : yes/no

Speaking order/Non-speaking order

Neutral Citation : yes/no

To

The District Munsif Court at Sholinghur, Ranipet District.



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V.LAKSHMINARAYANAN, J.

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