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C.R.P.(PD)No.4228 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4228 of 2024

and

C.M.P.No.27590 of 2024

1. Manivasagam
2. Neelamegam
3. Tamil Selvan
4. Rani

....

Petitioners

..Vs..

1. Sarojini
2. Arulmozhi

....

Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records and set aside the Fair and Decreetal Order made in I.A.No.271 of 2019 in O.S.No.18 of 2012 dated 07.11.2019 passed by the learned II Additional District Judge, Chidambaram.



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For Petitioner : Mr.M.Saravanan
for G.Pugazhenth
For Respondents : Mr.V.Balaji (R1)
R2 -served

ORDER

This civil revision petition challenges the order dated 07.11.2019 in I.A.No.271 of 2019 in O.S.No.18 of 2012 on the file of the learned II Additional District Judge, Chidambaram.

2. O.S No.18 of 2012 is a suit for partition and separate possession filed by the 2nd respondent in the revision. She pleaded that the suit schedule mentioned properties are the ancestral properties of three brothers, viz., Krishnamurthy, Manikkavachagam, and Murugavel @ Murugaiyyan. According to her, they entered into a partition agreement on 15.05.1987 and the properties were allotted to the share of Manikkavachagam. Subsequently, Manikkavachagam and his three brothers entered into a registered partition deed on 3-12-2004, pursuant to the earlier partition deed of the year 1987. Since the properties are joint family properties, she issued a notice calling upon the parties to give her due share. When this was denied, she came forward with the



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suit for partition, impleading Manikkavachagam and her siblings as defendants to the suit.

3. Pending the litigation, the aunt of the plaintiff and the wife of Krishnamurthy filed an impleading application in I.A No. 271 of 2019. Her plea was that from the wedlock between Krishnamurthy and herself, two sons and two daughters were born, namely (i) Rajendran, (ii) Anbuselvan, (iii) Kundhavi and (iv) Jothi. Anbuselvan had passed away in 1983 and therefore, the interest of Anbuselvan in the joint family property came to her. Hence, she pleaded that she is a proper and necessary party to the proceeding.

4. The said application was resisted by the plaintiff pleading that the proposed party is neither a proper nor a necessary party and her presence in the suit for partition is unnecessary. The learned District Judge allowed the application on 07.11.2019. Hence, this revision.

5. At the outset, I should point out that the civil revision petition has been presented by the defendants 1 to 4 to the suit. The plaintiff Arulmozhi has neither challenged the order nor has she appeared before



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this court in support of the revision. This shows that the plaintiff is not aggrieved by imploding the 1st respondent to the suit. However, since the suit is for partition, I have heard Mr. Pugazhendhi on the merits of the case.

6. The case of the 1st respondent is that Krishnamurthy, Manikavachakam and Murugavel @ Murugaiyan formed a joint family property. On account of the birth of Rajendran and Anbuselvan to the 1st respondent, they automatically became members of the joint family. If that be the position, on the death of one of the co-parcenars, succession opens. By virtue of Section 8 of the Hindu Succession Act, 1956 the mother becomes a Class 1 heir to the fractional share that Anbuselvan would have been entitled to.

7. Even if I were to take the best case of the plaintiff and the defendants 1 to 4, when the partition deeds were entered into in the year 1987 and 2004, the 1st respondent had not been made a party to the same. In other words, the partition deeds, even if it is taken to be true, did not deal with the right of the 1st respondent. Therefore, her presence, as a sharer of the property, would have to be dealt with by the court. I have to



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add here that I have not gone into the issue whether the partition deed of 1987 or the 2004 is true and genuine. I have come to the conclusion that the first respondent is a necessary party because by birth of Anbuselvan and Rajendran and their death, the 1st respondent will have a share. Any person, who has an interest in the property, should be made as a party to a partition suit. Otherwise, the suit could be dismissed for suffering from the vice of partial partition. The mistake committed by the plaintiff in not impleading the 1st respondent, has been rectified by the latter, by filing an impleading application.

8. I do not find any error in the order passed by the learned II Additional District judge at Chidambaram. The order in I.A No. 271 of 2019 in O.S. No. 18 of 2012, dated 7.11.2019 is confirmed.

In the result, this civil revision petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

27.11.2024

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

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V. LAKSHMINARAYANAN,J.

arr

To

The II Additional District Judge,
Chidambaram.

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