



C.R.P.(MD)No.1819 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.10.2024

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

C.R.P.(MD)No.1819 of 2024

and

C.M.P.(MD)No.10251 of 2024

1.V.Eswaran
2.E.Mageshwaran
3.E.Sathees Kumar

... Petitioners

Vs.

1.Velmurugan
2.Ratnam
3.V.S.Sandip
4.S.Sevika
5.S.Murugan
6.M.Thangapandian

... Respondents

PRAYER : Civil Revision Petition is filed under Section 115 of C.P.C., against the order, dated 13.10.2023, passed in E.A.No.1 of 2022 in E.P.No.114 of 2023 in O.S.No.46 of 2015 on the file of the Additional District Sessions Judge, Periyakulam.

For Petitioners	: Mr.S.Ramsundarvijayraj
For R1	: Mr.P.V.Gurudevaraj
For R2 to R6	: No appearance
Advocate Commissioner	: Mr.S.Mukesh



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ORDER

The present civil revision petition is filed by the defendants 6 to 8 in the suit against the order, dated 13.10.2023, passed in E.A.No.1 of 2022 in E.P.No. 114 of 2023 in O.S.No.46 of 2015 on the file of the Additional District Sessions Judge, Periyakulam.

2. The brief facts are that the 1st respondent herein namely Velmurugan had filed the suit in O.S.No.46 of 2015 for recovery of money. The said Velumurugan had granted loan to one Late.S.V.Swaminathan for which mortgage deed was executed. In order to recover the money along with interest the suit in O.S.No.46 of 2015 was filed against the respondents 2 to 6 herein who is the wife and children of the said Late.S.V.Swaminathan. The suit was decreed. Against which the said Velmurugan had filed E.P.No.114 of 2023.

3. The revision petitioners herein submitted that the mortgaged property is joint family property and partition suit is pending. One Chinnathai had filed a partition suit in O.S.No.71 of 1985 (renumbered as O.S.No.354 of 2021) on the



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file of Sub Court, Periyakulam against Chinnammal, Ochammal, Chinnasamy, Swaminathan, Chinnamayan, Saraswathi and the same was allowed vide Judgment and Decree dated 24.04.1992 granting 1/7th share to the plaintiff Chinnathai. The defendant Swaminathan had filed appeal suit in A.S.No.57 of 1993 on the file of Principal District Court, Madurai. The said Chinnathai had filed cross objections in the appeal suit. The Appeal Suit was dismissed, cross appeal was allowed modifying the Trial Court judgement to an extent that the said Chinnathai is entitled to 1/6th share. Aggrieved over the defendants had filed S.A.No.1773 of 1996 and the same was dismissed as abated. Thereafter I.A.01 of 2021 was also filed for passing final decree and the final decree was also passed against which an appeal is preferred and the same is pending.

4. Hence the revision petitioners V.Eswaran and others had filed E.A.No.1 of 2022 to implead themselves as parties in the E.P.No.114 of 2023 in O.S.No.46 of 2015. The contention of the revision petitioners is that the plaintiff Velmurugan had including the undivided share of their joint family property belonging to the revision petitioners herein and the respondents 2 to 6 herein. The suit was decreed



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without hearing their contention, hence they prayed to implead themselves in the execution petition. The specific contention of the revision petitioners is that the suit property is still joint property, without dividing the property in metes and bounds in the partition suit, the mortgagor cannot seek any portion of the property.

5. But the said impleading petition was dismissed on the ground that the property mentioned in mortgage suit is different from the property mentioned in partition suit. The property mentioned in mortgage suit is S.No.514/9, in eastern side 8-7/8 cents, on western side house constructed with Door No.38/A. But the property mentioned in partition suit is S.No.514/9 in 0.25 cents, eastern side 8-7/8 cents house constructed with Door No.8,11,19,20. It is seen that the joint family property in S.No.514/9 in 0.25 cents, on the eastern side 8-7/8 cents with Door No. 8,11,19,20 which was prevailing as in the year 1985, since the partition suit was filed on 26.06.1984. Thereafter there was no partition among the family members. Further the claim of the revision petitioners is that a portion of the family property was included in the mortgage suit.



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6. In order to ascertain the contention of the revision petitioners that the property was not divided and still the same is maintained as joint family property, and a portion was included in the mortgage suit, this Court appointed an Advocate Commissioner who had submitted an elaborate report wherein it has been stated that the properties have not been divided. The property is still maintained as joint property and the revision petitioner is having undivided share. Further stated that the survey numbers are changed into town survey numbers and door numbers are also changed. The present Advocate Commissioner had relied on the report filed by another Advocate Commissioner filed in final decree application and submitted that there are changes in the survey numbers. And on ground also there are difference in demarcation of property. In the report filed in final decree application, it is stated as under:

“The suit properties show in the partition suit as item 21 in S.No.514/6A and item 24 in S.No.514/9 are one and the same property. Further the T.S.No.514/64part and 513/3part are changed into T.S.No.31. Then the T.S.No.514/64part and 513/3part are changed into T.S.No.513/3part, 514/part, 514/6part are changed to T.S.No.43.”



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7. When the survey numbers of the properties are changed, there is difficulty in the identification of the property. Further both S.No.513 and S.No. 514 are taken together and new T.S.No.31 and 43 are formed. Also, there are difference in the extent of the property. Further there is no plea in the mortgage suit that the Door No.38A is a property purchased by the mortgagee Swaminathan independently through some sale deed. When there is no clarity, then the revision petitioners and the mortgagor ought to prove before the Court that the mortgaged property is not belonging to the joint family, it is independent property of Swaminathan and the identification of the property, whether portion of the property belonging to the other co-shares are the questions to be ascertained. Further, without dividing the joint family properties in metes and bounds, the mortgagor cannot seek any portion of the property. Therefore, the sale itself is based on erroneous facts. Since it is only undivided share, they cannot demarcate the property. They should approach the Court wherein the partition suit is pending.



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8. However, the challenge before this Court is only impleading petition, this Court is inclined to allow the civil revision petition. The E.A., order is set aside and the impleading petition is allowed. The case is remitted back to the Additional District Court and Court is directed to all take the objections of the impleading petitioners, consider their objections and thereafter, pass an order. The said proceedings shall be completed within a period of one year from the date of receipt of a copy of this order.

9. With the above said observations, the civil revision petition is allowed.
No costs. Consequently, connected miscellaneous petition is closed.

22.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes

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To

- 1.Additional District Sessions Judge,
Periyakulam.
- 2.The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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