



C.R.P(MD)No.427 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.04.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.427 of 2019

M.Annapoorani

... Petitioner/Plaintiff

Vs.

1.K.Samynathan

2.K.Valliammai

3.S.Jeyalakshmi

4.T.Thaiyanayagi

5.Abiramavalli

6.S.T.Sambantham

Through his Power Agent,
S.Mangayarkarasi

7.S.Mangayarkarasi

... Respondents/Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow the revision and set aside the order, dated 31.10.2018 made in CFR No.14662 of 2018 in U/F OS/18 on the file of the Principal District Judge, Thanjavur.

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For Petitioner : Mr.PT.S.Narendravasan

For R-1, R-3 & R-4: Mr.M.R.S.Prabhu

R-2 : Died

For R-5 to R-7 : No appearance

ORDER

The present Civil Revision Petition has been filed by the plaintiff challenging the order passed by the Trial Court, rejecting the plaint without numbering the said suit.

2. A perusal of the plaint indicates that the suit properties originally belonged to one Subramania Chettiar, who passed away leaving behind his five sons, namely, Saminatha Chettiar, Sivagurunatha Chettiar, Arunachalam Chettiar, Sundaresan Chettiar and Kumbalingam Chettiar. Kumbalingam Chettiar had passed away leaving behind his son Saminathan and two daughters, namely, Valliammai and Jeyalakshmi. The plaintiff is the daughter of the said Saminathan. According to the



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plaintiff, without impleading her, a partition suit was filed by the legal heirs of Subramania Chettiar. A preliminary decree came to be passed and pending final decree proceedings, Kumbaligam Chettiar had passed away and his legal heirs, namely, Saminathan Chettiar [plaintiff's father], Valliammai and Jeyalakshmi were added as parties in O.S.No.97 of 1988. Since the plaintiff was not impleaded in the said suit, the present suit has been filed by the plaintiff seeking a prayer that the final decree in O.S.No.97 of 1988 and the order passed in I.A.No.166 of 1990 are not binding upon the plaintiff and for other consequential prayers, challenging the alienations made based upon the said final decree and execution proceedings.

3. The Trial Court after considering the genealogy and final decree made in O.S.No.97 of 1988 had arrived at a conclusion that the plaintiff's father being a party to the final decree proceedings in O.S.No.97 of 1988, there is no necessity for impleading the plaintiff. The Trial Court has also relied the judgment of the Hon'ble Supreme Court in *Amrit Vs. Sudesh reported in 1969 (2) SCC 810* to arrive at a finding that a Kartha can



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represent the entire branch in a suit for partition and it is not necessary to implead the grand-sons or grand-daughters. On the said finding, the Trial Court has rejected the plaint without even numbering the same. Challenging the said order, the present revision petition has been filed.

4. According to the learned Counsel appearing for the revision petitioner, though her father was a party to the said final decree proceedings, the present plaintiff ought to have been impleaded and therefore, the present suit is maintainable. He further contended that the Trial Court ought not to have rejected the plaint even without numbering the same. The Trial Court has proceeded to pass orders on merits even without numbering the plaint. Hence, he prayed for setting aside the said order and to direct the Trial Court to number the plaint.

5. Per contra, the learned Counsel appearing for the respondents had contended that the final decree has been passed and orders have been passed in execution proceedings in the year 1990 itself. Based upon the said execution proceedings, all the co-sharers have taken possession of



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the properties also. Now after 27 years, the present suit has been filed only to disturb the other co-sharers with some ulterior motive. Hence, it is clear case of abuse of process of law. The Trial Court was right in rejecting such a plaint even without numbering the same.

6. I have carefully considered the submissions made on either side and perused the materials available on record.

7. No doubt, it is true that the plaint has been rejected by the Trial Court even without numbering the same. A perusal of the plaint clearly indicates that the plaintiff is attempted to re-agitate the matter which was closed 27 years back. The plaintiff's father was a party to the final decree proceedings and the execution proceedings. Properties have been allotted and taken possession by the parties way back in the year 1990. The plaintiff being a daughter of Mr.Saminathan, who is one of the sharers and an allottee in the final decree proceedings is attempting to disturb the settled issues and resurrect the old dispute again. Therefore, it is a clear case of abuse of process of Court and the Trial Court was right in



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rejecting the plaint even without numbering the same. Therefore, there are no merits in the Civil Revision Petition.

8. In the result, this Civil Revision Petition stands dismissed.

There shall be no order as to costs.

03.04.2024

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

To

- 1.The Principal District Judge,
Thanjavur.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

Order made in
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