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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.08.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.R.P(MD)No.1861 of 2024
and
C.M.P.(MD)No.10553 of 2024

1. Ponnammal

2. Sivagami

...Petitioners

Vs.

1. Chithirairani

2. Murugesan

3. Murugeswari

4. Alagesan

5. Mayandi

... Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order passed in E.A No.23 of 2022 in E.P No.7 of 2022 in O.S No.63 of 1989 on the file of the District Munsif Court, Sathankulam, dated 13.12.2023 and allow this Civil Revision Petition.

For Petitioner : Mr.T.A.Ebenezer

For Respondents : Mr.V.Meenakshisundaram



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ORDER

This Civil Revision Petition has been filed by the 3rd parties to set aside the Fair and Decreetal order passed in E.A No.23 of 2022 in E.P No.7 of 2022 in O.S No.63 of 1989 on the file of the District Munsif Court, Sathankulam, dated 13.12.2023

2. The plaintiff is the 1st respondent and the 2, 3, 5 & 6 defendants are the 2 to 5 respondents. The 4th defendant died. The revision petitioners are 3rd parties to the suit. For the sake of convenience, the contesting parties shall be referred to as Plaintiff, Defendants and 3rd parties. Or by the names.

3. The suit in O.S.No.63 of 1989 was filed by Chithirairani. The brief facts are that one Velu Nadar and Thangasamy Nadar are brothers. The Velu Nadar had married one Thangapoo Ammal and they had daughter Chithirairani, who is the plaintiff in the suit. After the demise of Velu Nadar his wife Thangapoo Ammal had married Thangasamy Nadar who is brother of Velu Nadar. The respondents 2 to 4 are minors namely Murugesan, Murugesari and Alagesan were born. The defendants 6 and 7 are 3rd parties. The said Chithirairani had filed the suit in O.S.No.63 of 2009 for partition and the same was decreed by 7/12th share for the plaintiff and 5/12th for the defendants.



Subsequently, final decree was also passed. The plaintiff had filed E.P.No.7 of 2022. Pending the execution petition, the present revision petitioners had filed E.A.No.23 of 2022 claiming rights over the suit property. The revision petitioners are claiming rights through 3rd marriage of Thangasamy.

4. The Learned Counsel appearing for the respondents submitted that after demise of Thangapoo, the said Thangasamy had married Thangpoo's sister namely Thanga Pushpam and they had two sons namely Ganesan and Kathiresan. Since the properties are belonging to the Velu Nadar, the said Thangasamy's second wife and the children are not having any rights and they were not impleaded in the suit. When the second wife children itself are not entitled to the properties, then there is no question of claiming rights to the 3rd wife, namely Suyambu Kani and their three children of the said Suyambu Kani namely Ponnammal, Sivagami and Manjalmatha. Further the respondents herein have disputed the 3rd marriage. After considering the dispute raised by the petitioners the E.A. No.23 of 2022 in E.P No.7 of 2022 in O.S No.63 of 1989 was dismissed. Against the said dismissal, this Civil Revision Petition is filed.



5. After hearing the submissions on either side, this Court is of the considered opinion, when the 2nd wife and children of Thangasamy are not entitled to. There is no question of claiming rights by the 3rd wife and her children. Moreover, the marriage itself is in dispute. Further the property is belonging to Velu Nadar and not Thangasamy. Therefore, this Court is not inclined to entertain this Civil Revision Petition.

6. It is brought to the knowledge of this Court, the present Civil Revision petitioners had filed another suit in O.S.No.12 of 2022, on the file of the District Munsif Court, Sathankulam. The Civil Revision Petitioner ought to establish the rights independently and had rightly filed the suit. Therefore, this Court is not inclined to grant any observation also.

7. Accordingly, this Civil Revision Petition is dismissed. No Costs. Consequently, the connected miscellaneous petition is closed.

09.08.2024

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

1. The District Munsif Court,
Sathankulam.
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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Order made in
C.R.P(MD)No.1861 of 2024

09.08.2024