



C.R.P.(MD)No.1973 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 30.08.2024

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.1973 of 2024
and
C.M.P.(MD)No.11214 of 2024

P.Meenakshi

... Petitioner / Petitioner / 3rd Party

Vs.

A.Rengaswamy (died)

1.R.Sriram

2.R.Bhanurekha

... Respondents 1 & 2/ Respondents 2 & 3 /
Lrs of Plaintiff

A.Balasubramaniam (Died)

A.Rajameenakshi (Died)

A.Chellammal (Died)

3.A.Subbulakshmi

... 3rd Respondents / 7th Respondent /
4th Defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, as against the fair and decreetal order passed in I.A.No.3 of 2024 in O.S.No.249 of 2011 on the file of the Ist Additional Subordinate Judge, Madurai dated 28.03.2024.



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For Petitioner : Mr.T.C.S.Thillainayagam

For Respondents : Mr.S.Sugumaran
for R1 & R2

ORDER

Heard both sides.

2.One A.Rengaswamy filed O.S No.249 of 2011 on the file of the 1st Additional Sub Judge, Madurai seeking partition. His siblings were the original defendants. During the pendency of the suit, Rengasamy passed away and his legal heirs came on record. Defendants 1 to 3 too passed away. They died unmarried. According to the revision petitioner, D1 to D3 had executed separate registered Wills in her favour. She therefore filed I.A.No.3 of 2024 to get herself impleaded in the suit.

3.The legal heirs of the original plaintiff countered the said application on the ground that the revision petitioner lacked the locus standi. Even while contesting the genuineness of the Wills said to have been executed in her favour, they pointed out that she had already executed settlement deed settling their share that devolved on her under the Will ; having done so, she cannot claim to be an interested party anymore. Sustaining the said objection, the court



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below vide order dated 28.03.2024 dismissed I.A.No.3 of 2024. Questioning the same, this civil revision petition came to be filed.

4.The contesting respondents have filed counter affidavit. The learned counsel appearing for the contesting respondents took me through its contents. He reiterated the reasons set out in the impugned order. He called upon this Court to sustain the impugned order and dismiss the civil revision petition.

5.I carefully considered the rival contentions and went through the materials on record. As pointed out by the learned counsel appearing for the contesting respondents, a coparcener cannot make a gift of his undivided interest in the family property to another coparcener or to a stranger without prior consent of the other coparceners. Any gift of undivided interest without such consent shall be void (vide *Thamma Venkata Subbamma (dead) by L.R.Appellant Vs. Thamma Rattamma and others 1987(0) AIR (SC) 1775*). Of course, there is no such restriction as far as the testamentary succession is concerned. Section 30 of the Hindu Succession Act is as follows:-

“30. Testamentary succession.- Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so 2 [disposed of by him or by her], in accordance with the provisions of the Indian Succession Act, 1925 (39 of 1925), or any other law for the time being in force and applicable to Hindus.”



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In ***Radhamma vs. H.N.Muddukrishna (2019) 3 SCC 611***, the Hon'ble Supreme

Court held as follows :

“7.[Section 30](#) of the Act, the extract of which has been referred to above, permits the disposition by way of Will of a male Hindu in a Mitakshara coparcenary property. The significant fact which may be noticed is that while the legislature was aware of the strict rule against alienation by way of gift, it only relaxed the rule in favour of disposition by way of a Will of a male Hindu in a Mitakshara coparcenary property. Therefore, the law insofar as it applies to joint family property governed by the Mitakshara school, prior to the amendment of 2005, when a male Hindu dies after the commencement of the [Hindu Succession Act, 1956](#) leaving at the time of his death an interest in Mitakshara coparcenary property, his interest in the property will devolve by survivorship upon the surviving members of the coparcenary. An exception is contained in the explanation to [Section 30](#) of the Act making it clear that notwithstanding anything contained in the Act, the interest of a male Hindu in Mitakshara coparcenary property can be disposed of by him by Will or any other testamentary disposition...”

The original defendants 1 to 3 in the suit were therefore competent to bequeath their undivided share in the suit property. The revision petitioner who is propounder of the Wills must prove the same. The question that arises is whether as a legatee, she can execute settlement deed settling the undivided share bequeathed on her. What cannot be done directly cannot be done indirectly also (*quando aliquid prohibetur ex directo, prohibetur et per*



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obliquum). The same principle can be extended to the case on hand also. If the coparcener cannot gift his undivided share without the prior consent of the other coparceners, his legatee also cannot do so. The legatee after all steps into the shoes of the coparcener. The limitations operating on the power of the coparcener to deal with the property would continue to govern the acts of the legatee also. Otherwise, the principle limiting the power of the coparcener to gift his undivided share can be overcome through this indirect device. I, therefore, hold that the settlement deed executed by the revision petitioner is void. If the settlement deed is void, the result is that the revision petitioner continues to have right and interest and hence she will have to be impleaded.

6.In this view of the matter, the impugned order is set aside. This civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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NOTE:Issue Order Copy on 04.09.2024



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To:

The I Additional Subordinate Judge, Madurai.



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G.R.SWAMINATHAN, J.

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