



C.R.P(MD)No.1867 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.04.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.1867 of 2019

A.Abdul Samathu

... Petitioner /2nd Petitioner

Vs.

1.S.Tajunisha

...1st Respondent/Respondent

2.B.Hyrunisha Banu

... 2nd Respondent/1st Petitioner

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to take on file and number it the Return Order, dated 24.09.2019 passed Unnumbered O.P.No.-- of 2019 on the file of the Family Court, Tirunelveli.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : No Appearance

ORDER

The present revision petition has been filed challenging an order passed by the Family Court, Tirunelveli in an unnumbered petition, wherein the Family Court has raised an issue relating to the maintainability of the O.P filed before it.



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2. A perusal of the petition filed under Section 7 (1) Explanation (c) of the Family Court Act, 1984 reveals that the 2nd petitioner, namely Abdul Samathu is the absolute owner of the property. He is married to the 1st petitioner, namely Hyrunisha Banu. Thereafter, he had got married to the respondent in the petition, namely S.Tajunisha. After marrying the respondent as 2nd wife, the owner of the property, namely Abdul Samathu had executed a gift settlement in favour of his 1st wife on 07.01.2019 under a registered document no.92/2019 on the file of Sub Registrar Office, Pettai, Tirunelveli.

3. In the petition, the petitioners have alleged that the respondent in the petition (2nd wife) had forcibly entered into the subject matter of the property and therefore, she has to be evicted. With the said averments, a prayer was sought for directing the respondent to vacate and hand over the possession of the petition scheduled property to the 1st petitioner.

4. The Family Court raised an objection relating to the maintainability of the O.P on the ground when the issue relates to recovery of an immovable property, an O.P before the Family Court



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would not be maintainable, but on the other hand, only a suit before the competent Civil Court would be maintainable. However, the petitioners have represented the O.P relying upon Section 7 (1) Explanation (c) of the Family Court Act, 1984 and contended that a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them could be a subject matter of adjudication before a Family Court. However, the Family Court had refused to entertain such an application. Challenging the same, the present revision petition has been filed.

5. The learned counsel appearing for the revision petitioner relying upon Section 7 (1) Explanation (c) of the Family Court Act, 1984 strenuously contended that this is a dispute between the parties to a marriage and therefore, even a property dispute can be adjudicated upon by the the Family Court. However, this Court is not inclined to accept the said contention for the following reasons:

(i) The 2nd petitioner in the O.P, namely Abdul Samathu has gifted the property in favour of the 1st petitioner on 07.01.2019. The O.P before the Family Court has been filed on 24.09.2019. Therefore, it is clear that when the O.P was filed before the Family Court, Abdul Samathu who is the husband of the



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respondent was no longer the owner of the property. Therefore, the said dispute can never be considered to be a dispute between the parties to the marriage.

(ii) The word “parties to the marriage” occurring in Section 7 (1) Explanation (c) of the Family Court Act, 1984 would refer only to the husband or the wife. In the present case, after gifting the property in favour of the 1st wife, the dispute is now between the 1st wife and the 2nd wife. Both of them can never be considered to be parties to a marriage. Therefore, the Family Court was right in not entertaining the O.P before it. However, the petitioner is at liberty to approach the competent Civil Court for appropriate relief.

6. With the above said observations, this Civil Revision Petition stands dismissed. No costs. Since Family Court has no jurisdiction, the competent Civil Court can entertain the suit, if it is otherwise filed in order.

02.04.2024

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

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To

- 1.The Family Court,
Tirunelveli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Order made in
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