



CR.P(MD)Nos.2568 & 2569 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

<i>Judgment Reserved On</i>	<i>Judgment Pronounced On</i>
30.10.2024	02.12.2024

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

C.R.P(MD)Nos. 2568 & 2569 of 2024
and
C.M.P(MD)Nos. 14853 & 14855 of 2024

1. Ganesan

2. Janakiammal

... Petitioners in both the
CRPs.

vs.

1. Rajammal

2. Vadivel

... Respondents in both the
CRPs.

COMMON PRAYER : Civil Revision Petition are filed under Section 115 of Civil Procedure Code, to set aside the Fair and Decretal Order dated 29.07.2024 passed in I.A.No.1 of 2020 in I.A.Nos.75 of 2015 & 88 of 2018 in A.S.SR.No. 2054 of 2015 on the file of the Principal Subordinate Court, Tiruchirappalli and allow this Civil Revision Petition.



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In both the Civil Revision Petition:

For Petitioner : Mr.M.Rajeswari

For Respondent : Mr.T.Vadivelan

COMMON ORDER

Both the Civil Revision Petitions arises from interlocutory application filed in A.S.SR.No.2054 of 2015, hence both the petitions are heard and common order is passed.

2.(i) The C.R.P.(MD)No.2568 of 2024 is filed by the defendants 4 and 5 in the suit to set aside the Fair and Decreetal Order dated 29.07.2024 passed in I.A.No.1 of 2020 in I.A.Nos.75 of 2015 in A.S.SR.No.2054 of 2015 on the file of the Principal Subordinate Court, Tiruchirappalli.

2.(ii) The C.R.P.(MD)No.2568 of 2024 is filed by the defendants 4 and 5 in the suit to set aside the Fair and Decreetal Order dated 29.07.2024 passed in I.A.No.2 of 2020 in I.A.Nos.88 of 2018 in A.S.SR.No.2054 of 2015 on the file of the Principal Subordinate Court, Tiruchirappalli.



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3. The plaintiffs in the suit are the respondents and the defendants 4 and 5 in the suit are the revision petitioners herein. For the sake of convenience, the parties are referred to be as the plaintiffs and defendants.

4. The plaintiffs had filed a suit in O.S.No.2550 of 1998 claiming maintenance against the 1st defendant and also partition in the suit property claiming half share for the 2nd plaintiff. The 1st plaintiff is the wife of the 1st defendant and the 2nd plaintiff is the son of the 1st defendant and they constitute the Hindu Joint Family. The suit property is property of Hindu Joint Family consisting of plaintiffs and 1st defendant. The 1st defendant got the property through partition between himself and his brother Velayutham. The suit property consists of three titled houses and the same is let out to defendants 2 and 3 / tenants. The first defendant is addicted to drinking and bad habits, was living with another lady, neglecting the plaintiffs, hence maintenance petition under section 125 of Cr.P.C. was filed in M.C.No.2 of 1984 on the file of Chief Judicial Magistrate, wherein Rs.125 was awarded. Since it has become impossible to remain jointly the plaintiffs had issued notice dated 28.09.1992 claiming partition and maintenance and the 1st defendant replied with incorrect facts. In the



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meanwhile, the 1st defendants had taken steps to sell the property to the defendants 5 and 6 and thereafter sale deed dated 15.12.1993 was executed under Ex.A.4. Hence, the suit for partition and maintenance was filed against the defendants.

5. The 1st defendant had filed written statement but did not participate in the Trial, hence thereafter he had set exparte on 27.11.2002. The 4th defendant had filed written statement which is adopted by the 5th defendant, wherein it is stated that the suit is frivolous and vexatious, it has no merits. The suit property has not been correctly described, measurement and boundaries are incorrect, the southern boundary is the house of the 1st defendant. It is false to say that it belongs to the temple. the suit property is not consisting of four houses. The rooms are being described as house, but the suit property is a single house. It is true that the suit property is joint family property but it is false to state that still belongs to the 1st defendant and the 2nd plaintiff. The suit property was sold to meet out the family expenses and the defendants 4 and 5 had purchased the property on 15.12.1993 for value consideration of Rs.30,000/-. It is false to state that the 1st defendant is addicted to drinks, that he lives with Chandra and then



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with another women. Since the defendant 4 and 5 had purchased for valuable sale consideration, the same is not available for partition. Hence prayed to dismiss the suit.

6. Based on the pleadings and evidences the suit was decreed in part, wherein it is held that the 1st plaintiff is entitled to past maintenance of Rs.6,000/- and future maintenance of Rs.500/- per month from the 1st defendant. As far as the partition is concerned, preliminary decree was granted, granting ½ share to the 2nd plaintiff in the suit property. In the judgment it has been confirmed that the 4th and 6th defendants are one and the same.

7. The plaintiffs had filed E.P.No.14 of 2006 in R.C.O.P.No.38 of 2005 against the tenants Ravi, Janaki and Ganesan. The defendants 4 and 5 had filed E.A.No.224 of 2006 in E.P.No.14 of 2006. During the pendency of E.A. a compromise memo was filed on 26.11.2006 in E.A.No.224 of 2006 stating that the 1st defendant (husband) is entitled to half share in the suit property which was purchased by the defendants 4 and 5. And the division of ½ share would be worked out in final decree application. Based on the compromise memo the



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E.P.No.14 of 2006 was closed. But thereafter the plaintiffs did not agree to the terms of compromise and had filed E.A. but the said E.A. was not taken on file. The revision petitioner herein had filed C.R.P.(MD)No.1196 of 2012 but it was withdrawn.

8. Since the compromise was failed, left with no option the defendants 4 and 5 had filed appeal suit in A.S.S.R No.2054 of 2015 with condone delay petition to condone the delay of 3927 days in I.A.No.75 of 2015 and another petition in I.A.No.88 of 2015 to rebut the evidence in A.S.S.R No. 2054 of 2015. However, the defendants could not prosecute the said applications since the defendants 4 and 5 went abroad for treatment and the said applications were dismissed for non-prosecution. Thereafter I.A.No.1 of 2020 in I.A.No.75 of 2015 was filed to restore the condone delay application and I.A.No.2 of 2020 in I.A.No.88 of 2015 was filed to restore the application. And both were dismissed. Hence the present civil revision petition is filed.

9. The primary contention of the defendants 4 & 5 is even though, they had filed vakalat in the suit and then had filed written statement, but was



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under the impression that the 1st defendant would contest the case and protect their interest. But the 1st defendant after filing the written statement did not participate in the trial and failed to appear before the court and remained exparte. Further the Court below had failed to consider the written statement filed by the 1st defendant. Hence the defendants 4 & 5 prayed to grant an opportunity to contest the case. But the Learned Counsel appearing for the plaintiffs vehemently objected for entertaining the present Civil Revision Petitions since there is huge delay of nearly 10 years. Further the 1st defendant/husband has not paid any maintenance and the plaintiffs are not having any shelter and they are dependent on the suit property. Therefore, prayed to dismiss this Civil Revision Petition. It is seen that the defendants 4 & 5 had contested the case, had marked the Ex.B1 to Ex.B5, further deposed before the Court. Therefore, it cannot be taken that the defendants 4 & 5 had not contested the case. Even though the 1st defendant remained exparte, the defendants 4 & 5 had contested the case by marking documents and by deposing. Hence the plea of the defendants 4 & 5 cannot be sustained.



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10. The next contention of the defendants 4 & 5 is that the Court below had erred in coming to the conclusion that the sale is hit by *lis pendens*. And submitted that the sale is of the year 1993, but the suit was filed in the year 1996, hence the suit is not hit by *lis pendens*. However, the said contention of the plaintiffs is that they had already issued suit notice, dated 28.09.1992. Immediately, after the said reply, the suit property was sold on 15.12.1993 for a sum of Rs.30,000/- to Janakiammal who is the 5th defendant in the suit. The Trial Court after considering the same has held that the sale is hit by the principles of *lis pendens*.

11. It is seen that the suit was filed only on 12.05.1993 before the Vacation Civil Court and the same was numbered as O.S.No.36 of 1993 and then transferred to Sub Court and renumbered as O.S.No.534 of 1993, thereafter based on pecuniary jurisdiction the suit was transferred District Munsif Court and renumbered as O.S.No.2550 of 1996. The registered sale deed was executed on 15.12.1993. When the suit is filed on 12.05.1993 and the sale deed was executed subsequently i.e. on 15.12.1993. Therefore, this Court is of the considered that the



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sale is hit by lis pendens and the plea of the defendants 4 & 5 the sale is prior to the filing of the suit is incorrect.

12. However it is seen that the judgment passed in O.S.No.2550 of 1996 the prayer of partition is granted to the 2nd plaintiff by granting $\frac{1}{2}$ share in the suit property. In such circumstances, the 1st defendant is entitled to another $\frac{1}{2}$ share in the suit property. Then the sale deed dated 15.12.1993 is valid as far as $\frac{1}{2}$ share in the suit property is concerned. Therefore, the defendants 4 and 5 / revision petitioners are entitled to $\frac{1}{2}$ share in the suit property.

13. Therefore, by taking all facts into consideration, this Court is of the considered opinion that, instead of condoning the delay and let the defendants 4 and 5 to contest the case, it would be suffice to consider the case on merits and pass orders. If the suit property is divided among the parties as per the decree in O.S.No.2550 of 1996 then both the plaintiffs and the defendants 4 and 5 would get $\frac{1}{2}$ share in the suit property.



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14. It is seen that there are three titled houses in the suit property, therefore the plaintiffs are entitled to one titled house and the defendants 4 and 5 is entitled to one titled house. The third house shall be divided into half and grant the same to the both the parties. Accordingly, the Judgment and Decree passed in O.S.No.2550 of 1996 on the file of the District Munsif Court, Trichy, is hereby modified to the extent stated supra.

15. Both the parties are permitted to file execution petition at the earliest and divided the property as stated supra.

16. With the above observations, these Civil Revision Petitions are disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
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To

1. The Principal Subordinate Court,
Tiruchirappalli.
2. The District Munsif Court,
Trichy.
3. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J

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***Pre- Delivery Common Order made in
C.R.P(MD)Nos. 2568 & 2569 of 2024***

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