



CRP.No.2194 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.03.2025

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.No.2194 of 2020

and

CMP.No.13841 of 2020

1. Pillanna (Died)
2. Mrs. Muniyamma
3. Rathnamma
4. R. Harish
5. Aruna
6. Mala
7. Lakshmi
8. Vengadesh

[Sole petitioner died. Petitioners 2 to 8 are brought on record as Lrs of the deceased Sole Petitioner viz. Pillanna vide Court order dated 18.03.2024 made in CMP.No.6131 of 2024 in CRP.No.2194 of 2020 by SSJ.]

...Petitioners

Vs.

1. Jayamma
2. Venkatasamy
3. Susheela



CRP.No.2194 of 2020

WEB COPY 4.Sathish

5.Girish Kumar

6.Gopi Krishna

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to allow this CRP by set aside the fair and decreetal order passed in IA.No.1/2019 in OS.No.162/2016 on the file of the District Munsif Cum Judicial Magistrate – I, Hosur dated 11.11.2019

For Petitioner : M/s.S.C.Vishwanth

For Respondent : M/s.G.M.Anantha Kumar for R.1 to R.5.

: R.6- served, No Appearance

ORDER

Challenging the order passed in I.A.No.1/2019 in OS.No.162/2016 by the District Munsif Cum Judicial Magistrate No.I, Hosur, in and by which the learned Judge had dismissed the application filed by the petitioner for amending the plaint, the petitioner is before this Court.



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2. The facts are briefly set out herein below and the parties are referred to in the same ranking as before the Trial Court.

3. The plaintiff had filed the suit O.S.No.162/2016 on the file of the aforesaid Court seeking the following reliefs:-

a) To pass preliminary decree by dividing the suit schedule property into 3 shares equally by metes and bounds in good and bad soils to allot 1/3 shares to the plaintiff.

b) To permit the plaintiff to file a final decree petition to divide the suit schedule property as per preliminary decree by appointing court commissioner to divide the suit schedule property into 3 equal shares by metes and bounds in good and bad soil and to allot 1/3 share to the plaintiff.

c) Directing the defendants to deliver the separate possession of the share allotted to the plaintiff.

d) Granting permanent injunction against the defendants No.1 to 6 restraining them from alienating the



CRP.No.2194 of 2020

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4. The suit property is an extent of 4 acres 24 cents in S.No.392/1, 2 and 3, Nagondapalli Village, Hosur Taluk, Krishnagiri District.

5. It is the case of the plaintiff that the suit property was the ancestral property of one Nanjappa. The said Nanjappa had executed a release deed in favour of his only son, the plaintiff, Thimmakka (mother of the plaintiff) and Marakka (grandmother of the plaintiff) under a registered release deed dated 22.09.1953. On the date of the release, the plaintiff was a minor, therefore, his mother, Thimakka, was his guardian. After the execution of the release deed, they have been in joint possession and enjoyment of the property and the property is treated as Hindu Undivided Family property.

6. Thereafter, without the knowledge and consent of the plaintiff, Timmakka and Marakka had sold 4 acres of land out of 4.24 acres in S.No.392 in favour of one Munisamyappa @ Munisamy under a registered



CRP.No.2194 of 2020

WEB COPY

sale deed dated 16.02.1956. Thereafter, Timmakka and Marakka passed away.

7. The plaintiff had borrowed money from one M.K.Ibrahim Sahib on the security of the suit property under a registered mortgage deed dated 17.05.1965. The mortgage was thereafter redeemed by the plaintiff. This would go to show that despite the sale deed dated 16.02.1956, possession continues to be with the plaintiff.

8. The purchaser Munisamyappa had died leaving behind his children, defendants 1 to 3 and one Krishnappa as his legal heirs. The said Krishnappa died leaving behind his two sons defendants 4 and 5 as his legal heirs. The defendants 1 to 5 had joined together and sold 30 $\frac{3}{4}$ cents in S.No.392/1 and 392/3 to the 6th defendant under a registered sale deed dated 30.10.2014. This transaction, according to the plaintiff, is a sham and fraudulent one.

9. The plaintiff would submit that the suit property has to be divided



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into three equal shares and the plaintiff is entitled to 1/3rd share in the suit property by virtue of a release deed of Nanjappa. Therefore, the Suit.

10. A written statement was filed by the 2nd defendant which was adopted by defendants 1, 3 to 5 in which the release deed of Nanjappa was admitted and the defendants would submit that in addition to 4.24 acres in S.No.392 an extent of 2.52 acres in S.No.393, an extent of 53 cents in S.N.o .362/3, an extent of 52 cents out of 61 cents in S.No.362/2 and a house property situate at Hosur Taluk was released in favour of the plaintiff, Timmakka and Marakka.

11. The defendants would admit the mortgage. However, they would go on to state that out of the 4 acres and 24 cents, 11 cents was acquired for the purpose of constructing a road even prior to UDR survey and under the UDR survey, the original survey number 392 was further sub divided S.No.392/1 to 392/3 and the portion purchased by Munisamiappa in original S.No.392 was further sub divided as S.Nos.392/1 and 392/3 and a separate



CRP.No.2194 of 2020

WEB COPY

UDR patta was issued in the name of the 2nd defendant.

12. It is also the case of the defendants that the plaintiff had himself sold the property to different persons and the sale was as early as in the year 1968 and without disclosing the above facts, he had filed the suit for partition for only one survey number that too without including all the ancestral properties. Ultimately, the defendants would seek to have the suit dismissed.

13. Pending the suit, the plaintiff has come forward with an application to amend the plaint. In the amendment application, the plaintiff would submit that during the updating survey, the land bearing S.No.392 has been subdivided as S.No.392/1 to S.No.392/3 and the UDR 'A' register stands in the name of the Akkaiyamma with reference to the land bearing No.392/2 measuring 24 cents.

14. The petitioner would further submit that he had obtained a hand



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loan from one Rama Krishna Setty and as security the said Rama Krishna Setty had obtained a sale deed in his favour in respect of 24 cents. Thereafter, the said Rama Krishna Setty had sold the 24 cents in favour of one Akkaiyamma by way of a registered sale deed dated 10.08.1978. He would also submit that out of love and affection, he had executed a registered gift deed with respect to 24 cents in favour of his son Venkatesh and due to some misunderstanding, he had cancelled the said gift deed. However, due to an oversight, the above facts have not been included in the plaint. Therefore, the plaintiff had come forward with the impugned application to amend the plaint.

15. The respondent had filed a counter stating that the application is highly belated. They would submit that the amendment sought for introduces a new set of case and the petitioner had filed this application only to protract and prolong the proceedings and to fill up the lacuna.

16. The learned Trial Judge, after considering the evidence, dismissed



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the said application, holding that the petitioner has come forward with an entirely new case without impleading the necessary parties. Challenging the same, the petitioner is before this Court.

17. Heard the counsels on either side and perused the records.

18. The petitioner in his amendment petition seeks not only to convert the suit property but has also introduced an entirely new set of transactions by introducing another sale deed in favour of one Rama Krishna Setty as also the sale deed in favour of one Akkaiyamma and the gift deed in favour of his son.

19. Further, after setting out various transactions in respect of 4.25 acres which is the subject matter of the suit, the plaintiff has not chosen to implead those persons who are connected to the transactions as well. Therefore, this is a clear case of non-joinder of necessary party and the District Munsif Cum Judicial Magistrate – I, Hosur has rightly dismissed the



CRP.No.2194 of 2020

WEB COPY

application. I see no reason to interfere with the order passed by the District Munsif Cum Judicial Magistrate – I, Hosur.

20. Accordingly, the Civil Revision Petition stands dismissed. However, considering the fact that the suit is of the year 2016, the learned District Munsif Cum Judicial Magistrate – I, Hosur shall dispose of the same on or before 30 June 2025. No costs. Consequently, the connected Miscellaneous Petition is closed.

19.03.2025

shr

Index : Yes/No

Internet : Yes/No

Speaking Order/Non Speaking Order

To

The District Munsif Cum Judicial Magistrate – I, Hosur



WEB COPY



CRP.No.2194 of 2020

P.T.ASHA, J.,

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