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C.R.P.No.5250 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2025

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THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.5250 of 2024 and
CMP No.29367 of 2024

Kanagaraj

...

Petitioner

Vs.

Vanitha @ Rajeswari

...

Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the docket order dated 24.06.2024 passed in I.A.No.12 of 2024 in O.S.No.257 of 2015 on the file of the 1st Additional District Court at Tiruppur.

For Petitioner

: Mr.K.Myilsamy

ORDER

This civil revision petition challenges the order passed by the learned I Additional District Court at Tiruppur, in I.A.No.12 of 2024 in O.S.No.257 of 2015, dated 24.06.2024.

2.O.S.No.257 of 2015 is a suit for partition and separate possession.

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I.A.No.12 of 2024 was presented to reject the plaint. By an order dated 24.06.2024, the learned District Judge took a view that limitation being a mixed question of law and fact and since the plaintiff is not a party to the documents *inter se* entered into between the defendants, he is not willing to entertain the application. Hence, he dismissed the same at the threshold. Challenging the said order, the present civil revision petition.

3.The claim of the plaintiff is that she is entitled to 1/6th share in suit item No.1, 1/4th share in suit item No.2 and 4 cents in suit item No.3. There is no dispute between the parties that one Kondasamy Gounder and his brother Thangamuthu Gounder had purchased a part of the suit property jointly on 12.12.1961. The remaining portion was purchased by the said Kondasamy Gounder on 11.03.1981. Kondasamy Gounder passed away on 01.07.1993. The plaintiff is the daughter one Vijayalakshmi, who is the predeceased daughter of Kondasamy Gounder. She pleaded that on the death of Kondasamy Gounder, his wife Angathal (the first defendant), defendants 2 to 5 and the plaintiff succeeded to the estate. The defendants 6



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to 8 are the legal heirs of her junior paternal grand father Thangamuthu Gounder. She pleaded that, she demanded her share in the property and as it was denied, she came forward with the suit. She pleaded that on the death of Kondasamy Gounder, all his legal heirs were / and are in joint possession of the property. Summons were served and the defendants filed a detailed written statement.

4. According to the second defendant, Kondasamy Gounder did not die intestate. He had executed an “UNREGISTERED WILL” dated 15.08.1993 in favour of the second and third defendants. As the “WILL” came into force on the death of Kondasamy Gounder, he is in possession and enjoyment of the property as the absolute owner along with his brother. He further pleaded that the plaintiff is not in joint possession of the property nor is the property liable to be partitioned by virtue of amended Section 6 of the Hindu Succession Act or by virtue of amendment made to Section 6 by the Tamil Nadu Amendment, namely, Act 1 of 1990.

5. The seventh defendant filed a written statement pleading that the



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property, on the demise of Kondasamy Gounder, was partitioned between the legal heirs of Kondasamy Gounder and Thangamuthu Gounder, by way of a registered document, dated 07.11.1996, registered as document Nos.2643 of 1996 & 2644 of 1996, on the file of the Nallur Sub Registry, Tirupur. Therefore, they sought dismissal of the suit.

6.After the completion of the pleadings, the second defendant took out an application for rejection of plaint. The primary plea being that there is no cause of action for the suit and the suit is barred by limitation. The second defendant pleaded that 30 years had gone by from the date of execution of the partition deed, dated 07.11.1996. Hence, Article 65 of the Limitation Act would kick in.

7.The learned Trial Judge dismissed the application holding as aforesaid. Hence this revision.

8.I heard Mr.K.Myilsamy for the civil revision petitioner.



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9.Mr.K.Myilsamy argues that on the death of Kondasamy Gounder, a partition deed had been entered into between the legal heirs of Kondasamy Gounder and his brother Thangamuthu Gounder. On the basis of this deed, the parties have separated the properties, which came to their hands on the death of their fathers and they have been enjoying the same independently. In addition, he points out that Kondasamy Gounder had executed a “WILL” in favour of the civil revision petitioner and his brother and hence, the property is not susceptible to partition.

10.I have carefully considered the submissions of Mr.K.Myilsamy.

11.For the purpose of rejection of plaint, the Court is concerned only with the averments made in the plaint and the documents filed therewith. The plea of the defendants, however sterling it may be, is irrelevant at the time of disposal of such an application. This is because, the plea of rejection of plaint is one in demurrer. The plea being one in demurrer, the Court takes



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the averments to be true and thereafter, analyzes whether the suit discloses the cause of action or whether it is barred by any provision of law. The plea in this case is that the suit is barred by limitation. As held by the Supreme Court in *Dahiben Vs.Arvindbhai Kalyanji Bhanusali (Gajra) [(2020) 7 SCC 366]*, in case, the reading of the plaint itself discloses that the suit is barred by time, it can certainly be rejected.

12.My reading of the plaint shows that the daughter of predeceased daughter of Kondasamy Gounder has presented the suit seeking for partition. In terms of the Hindu Succession Act, on the death of a Hindu Male, of the properties which are his self acquired properties, his Class I legal heirs take the property equally. The child of the predeceased daughter is one such heir. The question of applying amended Section 6 either by Act 1 of 1990 or by Act 29 of 2005 to the facts of this case does not arise. Those two amendments relate to the share that a female will get in the ancestral assets of a Male Hindu, who had coparcenary properties in his hands. This is a simple case, relating to application of Section 8 of the Hindu Succession



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Act. The fact that the civil revision petitioner has become the owner of the property along with his brother/third defendant, is a matter which requires proof. A “WILL” has to be proved in terms of Section 68 of the Indian Evidence Act read with Section 63 of the Indian Succession Act. The plaintiff does not concede to the execution of the “WILL”. Therefore, this plea would necessarily require evidence. If it requires evidence, it cannot be a matter for rejection of plaint.

13.Turning to the next submission of Mr.K.Myilsamy that the legal heirs of Kondasamy Gounder and his brother had entered into a partition deed in the year 1996, the plaint reads that the plaintiff is not a party to the said document. When a property is partitioned, all the parties, who have any right, title or interest over the property would have to be impleaded as a party. If it is not so done, then the co-owner, who has been left out in the partition deed, can certainly enforce his or her rights seeking partition by presenting a suit. Whether the plaintiff has been ousted from the property in order to apply Article 65 of the Limitation Act and whether the defendants



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have crystallized their rights by virtue of Section 27 of the Limitation Act, are all matters which require evidence. Though the learned Judge has rejected the petition without the receipt of a counter, I am inclined to agree with the learned Judge for the simple reason, when it comes to an application for rejection of plaint, a reading of the plaint alone being necessary, a counter from the plaintiff is unnecessary.

14.In the light of the above discussions, I do not find any reason to interfere with the order passed by the learned I Additional District Judge at Tiruppur, in I.A.No.12 of 2024 in O.S.No.257 of 2015, dated 24.06.2024. Accordingly, this civil revision petition stands dismissed. Consequently, connected miscellaneous petition is closed. No Costs.

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Internet: Yes
Index: Yes/No
Speaking/Non speaking order
NCC: Yes/No

02.01.2025

To:
I Additional District Court,
Tiruppur.

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