

CRP.No.5362 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

CRP.No.5362 of 2024
and CMP.No.29761 of 2024

C. Karthikaipavai

... Petitioner

Vs.

P. Saraswathi

... Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair and final order dated 01.03.2024 made in I.A.No.8 of 2023 in O.S.No.76 of 2013 on the file of the learned Subordinate Judge, Pollachi.

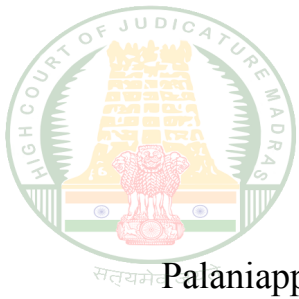
For Petitioner : Mr.J.Arvind

for Mr.M.N.Balakrishnan

ORDER

This civil revision petition challenges the order passed by the learned Subordinate Judge, Pollachi in I.A.No.8 of 2023 in O.S.No.76 of 2013 dated 01.03.2024. O.S.No.76 of 2013 is a suit for partition and separate possession.

2. The case of the plaintiff is that the suit schedule mentioned property came to the hands of one Chellappa Gounder on 12.05.1929, when it was allotted to him in a partition. Chellapa Goundar died and the plaintiff's father



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Palaniappa Gounder succeeded to the estate. Thereafter, from the income which was derived from the suit 'A' schedule mentioned property, the “B” schedule property was purchased in the name of the minor first defendant. The ancestral property was enjoyed by Palaniappa Gounder as long as he was alive and he went to meet his maker on 20.09.1984. Even after his death, the plaintiff pleaded the property was being enjoyed as a joint family asset. She claimed to be in a joint possession along with the other defendants. When she sought for a partition, the first defendant refused to partition the same and hence she came forward with the suit for the aforesaid reliefs.

3. The Civil Revision Petitioner is a purchaser lis-pendens. She filed an application to reject the plaint, on her being impleaded, as the 7th defendant. She raised two pleas, namely, as Palaniappa Gounder had died in the year 1984, her suit for partition cannot be presented by the daughters taking advantage of the Hindu Succession Amendment Act, 39 of 2005. The 2nd plea being that as Palaniappa Gounder had executed a “WILL” in favour of the 2nd defendant on 20.01.1978, and as the “WILL” had not been challenged, the suit is not maintainable.

4. The plaintiff was called upon to file a counter, she also did so.



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Thereafter, the learned trial Judge took up the application for disposal. She dismissed the petition. Hence, this revision.

5. I heard Mr.J.Aravind for Mr.M.N.Balakrishnan.

6. Mr.J.Aravind reiterated the contentions that was placed by his counterpart before the Court below.

7. In so far as the first plea that a daughter cannot take advantage of the Hindu Succession Amendment Act, 39 of 2005, if her father had expired prior to the Amendment Act is concerned, the issue has been settled by judgment of the Supreme Court in *Vineetha Sharma Vs Rakesh Sharma (2020) 9 SCC 1*. The Hon'ble Mr.Justice Arun Mishra, speaking for the bench held that by virtue of the Amendment Act, a daughter is deemed to be a coparcenor from the date of her birth. The date of death of her father does not make a difference to her right to present a suit for partition. The issue having been answered by the Supreme Court, I am afraid the plea of the learned counsel for the petitioner cannot be entertained.

8. In so far as the 2nd plea is concerned, the plaintiff has taken a specific



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plea in paragraph no.7 that the alleged “WILL” said to have been executed by Palaniappa Gounder in favour of the 2nd defendant is a forged document. When the document is denied as forgery, the question of seeking for a declaration does not arise. In any event, it is not the plaintiff who is projecting the “WILL”, it is the defendant who is projecting the “WILL”. When a “WILL” is projected to defeat the claim of the plaintiff, it is the duty of the propounder to prove the “WILL” and not the duty of the plaintiff to disprove the same.

9. If I were to agree to the submission of this learned counsel for the petitioner, I will be turning the concept of burden of proof vis-a-vis a “WILL” on its head. I am not inclined to lay down such a proposition of law.

10. In the light of the above discussion, I do not find any error in the order of the learned Subordinate Judge, Pollachi dated 01.03.2024 made in I.A.No.8 of 2023 in O.S.No.76 of 2013. Accordingly, the Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is also closed. No costs.

10.01.2025

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Index : Yes /No



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Speaking Order : Yes/No
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V. LAKSHMINARAYANAN, J.

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To
The Subordinate Judge,
Pollachi.

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