



C.R.P(NPD)(MD)Nos.564 & 565 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 20.01.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(NPD)(MD)Nos.564 & 565 of 2020

1.Dr.D.Kannan

2.D.Chandra

... Petitioners in
both C.R.Ps.

Vs

1.D.Prema

2.D.Radha

3.Maruthamuthu

... Respondents 1 to 3
in C.R.P.(MD)No.564/2020

4.Durairaj

... 4th Respondents
in C.R.P.(MD)No.565/2020

Common Prayer : These Civil Revision Petitions are filed under Section 115 of C.P.C., against the fair and decreetal order dated 06.12.2019 rendered in I.A.Nos.1 and 2 of 2019 in O.S.No.211 of 2017 on the file of Mahila Court, Tiruchirappalli.



C.R.P(NPD)(MD)Nos.564 & 565 of 2020

For Petitioners : Mr.P.Thiagarajan
in both C.R.Ps for Mr.S.Kathiravan

For Respondents : Mr.TSR.Venkatramanai,
in both C.R.Ps Senior Counsel for
V.Janaki Devi for R2 & R3
No Appearance for R1 & R4

COMMON ORDER

These Civil Revision Petitions are filed against the fair and decreetal order dated 06.12.2019 rendered in I.A.Nos.1 and 2 of 2019 in O.S.No.211 of 2017 on the file of Mahila Court, Tiruchirappalli.

2. The suit in O.S.No.112 of 1998 was filed by one Balammal against her father by name Duraisamy seeking partition and separate possession and for further relief that the Will and settlement alleged to have been executed by Duraisamy in favour of one Mrs. Radha and Maruthamuthu as invalid and not binding upon her share. On 10.08.1999, Duraisamy Konar died. The suit was transferred to District Munsif Court, Trichy, renumbered as O.S.No.76 of 2005. Balammal filed an application in I.A.No.459 of 2014 seeking permission of the Court to withdraw the same and file a fresh suit on the same cause of



C.R.P(NPD)(MD)Nos.564 & 565 of 2020

action. That application came to be dismissed by the trial Court by order dated 07.04.2015. Against which CRP(MD)No.2246 of 2015 was filed by which the order passed by the trial Court was set aside. Balammal was granted liberty to withdraw the suit and file a fresh suit on the very same cause of action, by order dated 25.05.2017. Later Balammal filed suit in O.S.No.211 of 2017 before the Mahila Court, Trichy, seeking several reliefs. On 29.04.2019, Balammal died, leaving behind the petitioners and respondents herein as a legal representatives. The defendants 1 and 2 filed an application in I.A.No.1 of 2019 to transpose themselves as plaintiffs and I.A.No.2 of 2019 was filed to implead husband of Balammal as party. Both the applications were dismissed by the trial Court by order dated 06.12.2019. Against which these two separate revision petitions are preferred. This is the background facts and dates and events in short.

3. Heard both sides.

4. The only point which arises for consideration is whether cause of action is available to the revision petitioners herein to prosecute the suit filed by Balammal in O.S.No.211 of 2017. Elaborate arguments



C.R.P(NPD)(MD)Nos.564 & 565 of 2020

are submitted by both sides. Now we will straightaway go to the prayer sought by Balammal in O.S.No.211 of 2017. Declaration that the suit property absolutely belong to her and for consequential permanent injunction and in respect of the permanent injunction relief alternative prayer is sought for recovery of possession of the suit properties.

Now we will go to the plaint averments.

Her father namely Duraisamy Konar had two brothers. One elder and younger by name Ramasamy and Chinnasamy. Chinnasamy's son is arrayed as 5th defendant by name Maruthamuthu. The defendants 1 to 4 are her children. 4th defendant Radha is the wife of 5th defendant. By relationship 5th defendant is the son in law of Balammal. There was a partition between herself and her deceased father. She was in possession and enjoyment of the properties. The fourth defendant claims right over the properties by virtue of settlement deed dated 27.05.1993 and 01.06.1993 alleged to have been executed by her father. According to Balammal these documents are not valid and true as stated above. Similarly the Will dated 19.01.1993 and 03.06.1993 were also



C.R.P(NPD)(MD)Nos.564 & 565 of 2020

challenged, stating that fabricated one. So in effect, a settlement and the Will alleged to have been executed by her father is under dispute.

5. In the above said factual ground, now we will go to the statement filed by the first and second defendants who are the revision petitioners herein. They supported the case of the plaintiff, to some extent. They disputed the claim made by the defendants 4 and 5. They disputed the settlement deeds and Will alleged to have been executed by Duraisamy in favour of defendants 4 and 5. Now on this account, after the death of Balammal they wanted to transpose themselves as plaintiffs 2 and 3.

6. Learned Senior counsel for the respondents would submit that cause of action does not survive to the revision petitioners herein to prosecute the suit which was filed for declaration and permanent injunction and for alternative relief of recovery of possession. If at all the revision petitioners can file only a suit for partition, if they are really having any right in the properties.



C.R.P(NPD)(MD)Nos.564 & 565 of 2020

7. Per contra, learned counsel for the revision petitioners would submit that the settlement deed as well as the Will alleged to have been executed by Duraisamy in favour of the defendants 4 and 5 was challenged by Balammal. They supported the case of Balammal on that score. So challenging the above said documents will give right to them to transpose themselves as a party. If at all liberty may be granted to them to amend the plaint after transposing.

8. I am not going to decide the merits of the claim made by the revision petitioners or by defendants 4 and 5. If any observation is made by this Court in respect of the above said settlements and Wills alleged to have been executed in favour of defendants 4 and 5, it will cause serious prejudice to the parties in future. So I am consciously avoiding any discussion on that score. It is left open to be decided in an appropriate manner in a appropriate proceedings to be initiated by the revision petitioners or by the defendants 4 and 5. It is up to them to decide the further course of action.

9. A right to sue or prosecute the matter will survive only if the



C.R.P(NPD)(MD)Nos.564 & 565 of 2020

revision petitioners are claiming right through Balammal. Balammal herself filed a suit for partition, later thought it fit to withdraw the same and file a present suit. In the plaint it has been stated by Balammal that defendants 1 to 3 are disgusted that the defendants 4 and 5 attitude. As mentioned above, defendants 4 also one of the children of Balammal. Till the life time of Balammal / revision petitioner, they cannot claim any right in the property. Only upon the death of Balammal, if at all they can claim right. So this will enure to their benefit that Balammal herself is dead now. Cause of action will not survive to some of the children to prosecute the suit which was filed for declaration. Only on that account, learned Senior Counsel appearing for the respondent would submit that if at all only a suit for partition can be filed by the revision petitioners and they cannot prosecute the original suit. I am in full agreement with the arguments advanced by the learned Senior Counsel for the respondent. As mentioned above, they can work out the remedy in an appropriate manner by appropriate proceedings. What sort of proceedings to be initiated or taken by the revision petitioners is up to their choice and advise.



C.R.P(NPD)(MD)Nos.564 & 565 of 2020

10. Therefore, finding no reason to interfere with the order passed by the trial Court, these Civil Revision Petitions fail and accordingly, dismissed, ofcourse with the above said observation. No costs. After disposing these matters, again the learned counsel for the revision petitioner has sought indulgence of this Court to grant permission to them to file a suit for partition. As mentioned above what sort of action to be taken by them is the subject to their legal advice. I am not indicating anything in this order as to the character of the proceedings to be initiated by the revision petitioners. It is made clear that as mentioned above, I am not making any discussion or observation with regard to the right of the parties.

20.01.2025

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

pnn

To

1.The Judge, Mahila Court, Tiruchirappalli.

8/10



C.R.P(NPD)(MD)Nos.564 & 565 of 2020

2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

WEB COPY



WEB COPY



C.R.P(NPD)(MD)Nos.564 & 565 of 2020

G.ILANGO VAN, J.

pnn

C.R.P(NPD)(MD)Nos.564 & 565 of 2020

20.01.2025