

C.R.P.(PD)(MD).No.2764 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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RESERVED ON: 18.03.2025

DELIVERED ON: 26.03.2025

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**C.R.P.(PD)(MD).No.2764 of 2023
and CMP(MD).No.14403 of 2023**

1.Chellamani

2.Sathiyabama

....Petitioners/Petitioners/Plaintiffs

Vs

Muthammal (died)

1.Saminathan

2.Bhuvaneswari

3.Viswanathan

....Respondents/Respondents/Defendants

PRAYE: Civil Revision Case is filed under Article 227 of Constitution of India, to call for the records relating to the fair and decreetal order passed in I.A.No.110 of 2022 in O.S.No.44 of 2019 on the file of III Additional District Court, Thanjavur @ Pattukkottai dated 30.08.2023 set aside the same as illegal arbitrary unenforceable.



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For Petitioners : Mr.V.K.Vijayaragavan

For Respondents : Mr.M.P.Senthill for R1 & R3

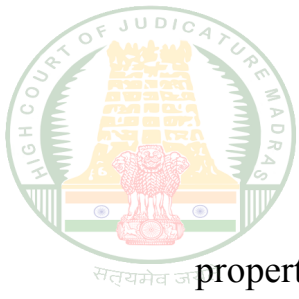
: Mr.R.Balaskrishnan for R2

ORDER

The plaintiffs in O.S.No.44 of 2019 on the file of the III Additional District Court, Thanjavur at Pattukottai had filed this revision petition challenging the dismissal of an application filed under Order 6 Rule 17 of C.P.C which was filed to include new properties in a suit for partition.

2.A perusal of the records reveal that the revision petitioners herein have filed the above said suit for the relief of partition and separate possession of their alleged 14/36th share in the suit schedule properties. The plaintiffs had further prayed for a declaration that the sale deed dated 02.07.2018 and the settlement deed dated 16.10.2008 said to have been executed by Ramanatha Iyer in favour of the second defendant is null and void.

3.When the suit was posted for trial, the plaintiffs had filed I.A.No.110 of 2022 under Order 6 Rule 17 of C.P.C to include the



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properties in the schedule on the ground that these properties are also joint family properties and by mistake they were left out at the time of filing of the suit.

4.The second defendant had filed a counter contending that item Nos.65 to 76 which are properties to be included are his individual properties and therefore, those items cannot be included in the present suit. It was further contended by the second defendant that item No.64 was assigned in his favour by the Government under free patta scheme and therefore, that is his individual property. The second defendant had further contended that item Nos.46 to 63 are the properties to their father Ramanatha Iyer and he had executed a registered Will on 02.07.2018 and some of the properties were bequeathed in his favour under the Will and some other properties bequeathed in the name of the fourth defendant. The beneficiaries under the Will have also mutated the revenue records and they are enjoying the same.

5.The second defendant had further contended that item Nos.60 and 61 are the properties of their Ramanatha Iyer. He had filed a suit as against the third party and when the matter was pending before the High Court in SA.Nos.821 and 824 of 2001, he had passed away. The second



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defendant had filed an impleading petition therein and the Will was found to be true by the First Appellate Court under the direction of the Hon'ble high Court. In such circumstances, those properties cannot be included in the present suit.

6.The defendants 3 and 4 have filed a counter contending that item Nos.64 to 76 are the individual properties of the second respondent and they cannot be included in the present suit. It has further pointed out that item Nos.46 to 63 though the properties belong to their father Ramanatha Iyer, he had executed a registered Will dated 02.07.2018 and based upon the said Will, the defendant has become the owner of the properties. In such circumstances, the said properties cannot be included.

7.The trial Court after considering the submissions made on either side, had proceeded to dismiss the said application on the following grounds:

a)The Will dated 02.07.2018 said to have been executed by the Ramanatha Iyer was placed before the Hon'ble High Court in SA.No.824 of 2021. The Hon'ble High Court had directed the First Appellate Court in A.S.No.18 of 2018 to consider the genuineness and validity of the Will and send a report. In compliance with the order of the High Court, an enquiry



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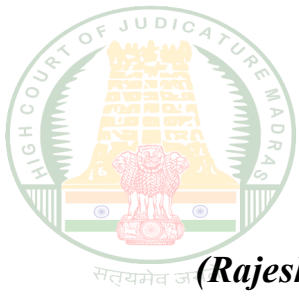
was conducted in the presence of all the legal heirs and it was found that the Will was a genuine one. Therefore, now the plaintiffs cannot contend that those properties are joint family properties which are liable to be partitioned.

b)As far as item No.64 is concerned, it was assigned in favour of the second defendant by the Government under free patta scheme and therefore, this is a private property of the second defendant.

c)The properties covered under Serial Nos.65 to 76 have been purchased by the individuals and the title deeds stand in their names and they are the individual properties of the second defendant through several documents and therefore, those properties cannot be included.

8.Challenging the above said order, the present revision petition has been filed by the plaintiffs.

9.According to the learned counsel for the revision petitioners, when an amendment is filed, the Court should not go into the truth or the falsity of the case in the amendment and the merits of the amendment should not be considered at the stage of considering the prayer for amendment. The learned counsel for the petitioners has relied upon a judgment of the Hon'ble Supreme Court reported in **(2006) 4 SCC 385**



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(Rajesh Kumar Aggarwal and others Vs. K.K.Modi and others) in

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support of his contention. He had further contended that whether the properties now sought for to be included in the suit for partition are joint family properties or self-acquired properties of the second defendant cannot be decided in the amendment application. According to him, the family had sufficient ancestral nucleus and therefore, the properties standing in the name of the co-parcener should only be presumed to be a joint family properties which were purchased out of the joint family funds. In such circumstances, the trial Court ought not to have dismissed the application for an amendment include those properties without conferring any opportunity to the plaintiffs to prove that there was joint family nucleus and the said properties were purchased by the second defendant only out of the joint family nucleus.

10.The learned counsel for the petitioners had further contended that any free patta granted in favour of one of the co-parceners, is for the benefit of the entire family and therefore, the said property has to be included. He had further contended that though the Will dated 02.07.2018 has been found to be true in an earlier litigation, the extent of right of Ramanatha Iyer to execute such a Will is still a question to be decided.

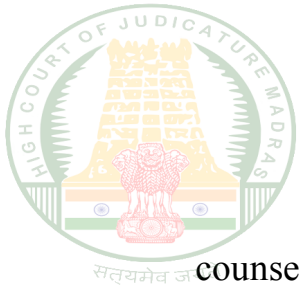


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According to the plaint averments, the suit properties are ancestral properties and they were administered and managed by Ramanatha Iyer. In such circumstances, whether Ramanatha Iyer had absolute right to bequeath the properties or not has to be considered. Even assuming that the Will is true, it would be only be binding to the extent of share of the said Ramanatha Iyer. Therefore, these issues cannot be decided at the time of amendment application. Hence, he prayed for allowing the revision petition.

11.Per contra, the learned counsel for the respondents/defendants had contended that the validity of the Will has already been upheld by the Hon'ble High Court in S.A.No.824 of 2001. In such circumstances, contrary to the Will, the plaintiffs cannot make an attempt to include those properties in a suit for partition. When the title of the second defendant has already been declared by the High Court in the previous proceedings, then the properties cannot now be contended to be joint family properties in the present suit. The learned counsel had further contended that the properties assigned in favour of the second defendant by the Government under free patta scheme, could only be considered to a separate property of the second defendant which cannot be subjected to partition. The learned



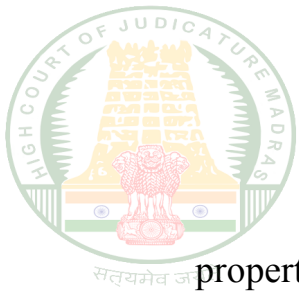
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counsel for the respondents had further contended that the properties in Serial Nos. 65 to 76 stand in the name of the second respondent and they are his separate properties. There is no pleadings whatsoever to the effect that these properties were purchased from and out of the joint family nucleus. That apart, the plaint has not been amended to incorporate any pleadings to the said effect. In such circumstances, the property standing in the name of the second defendant cannot be sought to be included in the suit for partition. Hence, he prayed for sustaining the order passed by the trial Court.

12.Heard both sides and perused the material records.

13.As far as item No.64 is concerned, it relates to Survey No. 42/19. The second defendant has produced Exhibit R21 before the trial Court to establish the fact that the said property has been assigned in his favour by the Government by way of proceedings dated 30.07.2002. Our High Court in a judgment reported in **(2000) 2 MLJ 538 (Sankaranarayanan Vs. Dhandapani and others)** has held that the Government grant in favour of one of the co-parceners, should be considered to be a separate property. In such circumstances, the trial Court has rightly rejected the request of the revision petitioners to include this



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property in the schedule.

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14.As far as Item Nos. 45 to 63 are concerned, it is the contention of the defendants that the said properties were the subject matter of a Will dated 02.07.2018 executed by Ramanatha Iyer in favour of the defendant. According to the defendant, the Will was proved in the presence of the other legal heirs in I.A.No.10 of 2018 in A.S.No.18 of 2018 by the direction of the Hon'ble High Court in S.A.No.824 of 2001. Since the validity of the Will has already been upheld, the properties that were bequeathed by Ramanatha Iyer cannot be included in a suit for partition.

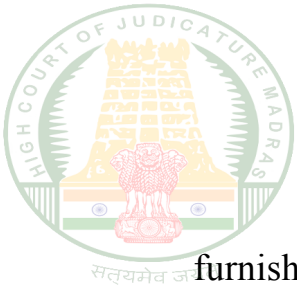
15.A perusal of the plaint reveals that the plaintiffs had contended that the suit schedule properties are ancestral properties. From and out of the income of the said ancestral properties various properties were purchased and they were treated as joint family properties. Those properties were managed by Ramanatha Iyer and he passed away on 11.07.2018. Therefore, according to the plaint averments, the properties that were managed by Ramanatha Iyer were purchased from and out of the ancestral joint family income. In such circumstances, even assuming that



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the Will executed by Ramanatha Iyer in favour of the defendant is proved, it would be binding only up to the extent of the share of the deceased Ramanatha Iyer. Whether Ramanatha Iyer would have right to execute the Will for the entire extent of property has to be decided during trial. The plaintiffs have to establish that there were sufficient ancestral nucleus and there was surplus income from the said ancestral nucleus. The plaintiffs have to further prove that the surplus income was used for purchasing the property in the name of Ramanatha Iyer. Only then the property standing in the name of the Ramanatha Iyer could be considered to be joint family properties. These aspects have to be decided only during trial. Hence, the trial Court was not right in rejecting the request of the plaintiffs for inclusion of item Nos.46 to 63 merely on the ground that the Will executed by Ramanatha Iyer dated 02.07.2018 has already been proved.

16.As far as Item Nos.65 to 76 are concerned, they stand in the name of the second defendant, the second defendant has also produced various sale deeds before the trial Court as Exhibits R2, R3, R9 to R12 and R14. According to the second defendant, these sale deeds would clearly establish that they are his separate properties. From the documents



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furnished on the side of the second defendant, it is clear that these properties have been purchased between the year 2005 to 2020. When the properties stand in the name of one of the co-parceners, initially the presumption is that the said property is the separate property of the said co-parcener. However, the entire burden would be on the plaintiffs to establish that these properties were purchased from and out of the joint family nucleus. Whether the family had a joint nucleus and there was any surplus and whether the said surplus was utilized by the second defendant to purchase those items of properties are the subject matter of trial. Therefore, the trial Court ought not to have entered into the merits of the amendment sought for.

17. In view of the above said deliberations, this Court is inclined to pass the following orders.

a) The order of the trial Court dismissing the amendment application with regard to item Nos. 64 is hereby confirmed.

b) With regard to other items of the properties sought to be included, the order of the trial Court is hereby set aside.



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18.In fine, this Civil Revision Petition is partly allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petition is closed.

26.03.2025

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

To

1. III Additional District Judge, Thanjavur
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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Pre-delivery order made in
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and CMP(MD).No.14403 of 2023

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