



C.R.P.(MD) No.2063 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.08.2023

CORAM

THE HON'BLE **MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

C.R.P.(MD) No.2063 of 2023

Thamayanthi

... Petitioner

Vs.

1.Venkatraj

2.Kanthasamy

3.Rajeshwari

4.Senthamilselvi

5.Mahalakshmi

6.K.Sindhuja

7.K.Sivagnanaprakash

... Respondents

Prayer: This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Docket Order of returning the Plaint by the Subordinate Court, Sattur in O.S.SR.No.370 of 2022 (CNR No.TNVRIE0008392022), dated 28.04.2023 on the file of the Subordinate Court, Sattur.

For Petitioner

: Mr.Lakshmi Gopinathan



C.R.P.(MD) No.2063 of 2023

ORDER

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This Civil Revision Petition is preferred by the petitioner as against the Docket Order of Returning the Plaint in O.S.SR.No.370 of 2022 (CNR No.TNVRIE0008392022), dated 28.04.2023 on the file of the Subordinate Court, Sattur.

2. According to the petitioner, the suit is filed by the petitioner for partition of the suit properties and to declare that the petitioner's/plaintiff's husband has attained "Civil Death". However, the Trial Court has returned the plaint with the following endorsements:-

Returned

இந்த வழக்குரையானது காவல் நிலையத்தில் முதல் தகவல் அறிக்கை பதிவு செய்து இறுதி அறிக்கை போடப்பட்ட பின்பு தாக்கல் செய்யப்படவேண்டிய சூழ்நிலையில் தற்போது இவ்வழக்கானது நிலைக்கத்தக்கதா விளக்கவும்.

கால அவகாசம் 1 மாதம்.

3. The learned Trial Judge has returned the plaint by stating that there is no piece of evidence for civil death of the petitioner's/plaintiff's husband.

4. Heard the learned counsel for the petitioner. Perused the records.



C.R.P.(MD) No.2063 of 2023

WEB COPY

5. The Trial Court has returned the plaint by stating that no FIR is registered for missing of the petitioners'/plaintiff's husband and therefore, the petitioner/plaintiff has to explain as to how the suit is maintainable. According to the petitioner/plaintiff, the suit is for partition claiming 1/6th share of her husband in the suit properties and also to declare that the petitioners'/plaintiff's husband A.Ponraj has attained 'Civil Death' since he was found missing from June, 2005.

6. The Trial Court is not correct in returning the plaint without affording sufficient opportunities to the petitioner/plaintiff to adduce evidence with regard to the missing of her husband from June, 2005. Only through evidence, the factum of missing of the petitioner's/plaintiff's husband can be established. For declaration of a person as Civil Death, the registration of FIR is not mandatory. It can be elucidated only by evidence.

7. Therefore, the impugned docket order passed by the learned Sub Judge, Sattur is set aside. The learned Sub Judge, Sattur is directed to number the suit if it is otherwise in order and proceed with the trial in accordance with law.



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C.R.P.(MD) No.2063 of 2023

K.GOVINDARAJAN THILAKAVADI, J.

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8. Accordingly, this Civil Revision Petition is allowed. No cost.

17.08.2023

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

The Subordinate Judge,
Sattur.

Note: Registry is directed to return the original plaint filed along with this C.R.P. to the learned counsel for the petitioner for representation of the same before the lower Court.

C.R.P.(MD) No.2063 of 2023