

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(PD).No.748 of 2015

and

M.P.No.1 of 2015

Kamaraj

(Cause title accepted vide order
of Court dated 09.02.2015 made
in M.P.No.1 of 2014 in CRP.

SRNo.97370 of 2014.)

....

Petitioner

Vs.

V.Parasuraman (died)

1.P.Thangasami

2.T.Jothi

3.P.Rajendran

....

Respondents

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India,
against the fair and decretal order of the learned Additional District Judge of
Cuddalore, dismissing I.A.No.34 of 2014 in O.S.No.222 of 2012 by order dated
28.08.2014.

For Petitioner : Mr.R.Gururaj

ORDER

The civil revision petition is directed against the order dated 28.08.2014
passed by the learned Additional District Judge, Cuddalore, in I.A.No.34 of 2014
in O.S.No.222 of 2012.

2. The petitioner instituted a suit in O.S.No.222 of 2012 before the learned First Additional District Judge, Cuddalore, against the respondents for partition claiming 1/6th share in the suit B & C schedule properties and for possession.

3. The first defendant is the grand father and the fourth defendant is the father of the plaintiff. The defendants 2 & 3 are the children of the first defendant. Pending suit, the first defendant died on 14.10.2013. The petitioner filed an application in I.A.No.34 of 2014 under Order 22 Rules 1 & 2 of Civil Procedure Code to record the death of the first defendant and to declare him as the legal heir of the first defendant. The application was opposed by the defendants 2 & 3. The trial Court dismissed the application. Aggrieved by the order, the present civil revision petition is filed.

4. Mr.R.Gururaj, learned counsel for the petitioner submitted that as per the Will executed by the first defendant, the plaintiff is the only legal heir of the first defendant. The trial Court dismissed the application without directing the petitioner to implead the other legal heirs.

5. Indisputably, the defendants 2 to 4 are the children of the first defendant. Based on the Will, the petitioner claims right over the suit property, but, the trial Court cannot declare him as the only legal heir of the first defendant. The trial Court rightly dismissed the application, which does not warrant interference by this Court.

6. I do not find any illegality or irregularity in the impugned order. Hence, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

It is open to the petitioner to file a necessary application to bring the other legal heirs of the first defendant. If any such application is filed, the trial Court shall dispose of the matter on merits and in accordance with law.

05.03.2015

Index : Yes/No
Internet: Yes/No
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To
The learned Additional District Judge, Cuddalore.

K.KALYANASUNDARAM,J.

sms

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