

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.09.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.2844 of 2016 and
CMP.No.14418 of 2016

Philip Rajasekar

...Petitioner

versus

1.M/s.Senthil & Co.,
Rep. by its Managing Director Indrajith
No.40/9, 40/10, Rukmanipalayam,
Kasba Mannargudi,
Mannargudi T.M.Taluk

2.Mary Roselin

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order made in I.A.No.83 of 2016 dated 15.03.2016 in O.S.No.26 of 2014 on the file of the DMC, Mannargudi.

For Petitioner : Mr.K.A.Ravindran

For Respondents : Mr.R.Rajaramani

ORDER

The first respondent filed a suit against the second respondent praying for a decree of injunction not to evict them without taking due process. In the said suit, the petitioner filed an application in I.A.No.83 of 2016 for impleading. The application was dismissed by the learned trial Judge. Feeling aggrieved the petitioner is before this Court.

2. The learned counsel for the petitioner contended that the petitioner is the brother of Thiru.Sudhakar Daniel. The marriage of Sudhakar Daniel with the second respondent was dissolved by a decree of divorce in IDOP No.60 of 2010. According to the learned counsel, deceased has executed a Will in favour of his brother and as such, he is entitled to be impleaded as a party to the suit.

3. The learned counsel for the second respondent submitted that the petitioner has not produced even a scrap of paper to show that he was given the property by the former husband of the second respondent. Such being the factual position, the learned trial Judge was perfectly correct in dismissing the application.

4. The petitioner is stated to be the brother of Sudhakar Daniel, former husband of the second respondent. According to the petitioner, his interest is only to protect the proprietary interest of the minors. During the course of submissions, the learned counsel repeatedly submitted that the petitioner filed the application only in the interest of the minors.

5. The factual matrix indicates that the property originally belonged to Thiru.Sudhakar Daniel. The marriage of the second respondent with Sudhakar Daniel has already been dissolved by a decree of divorce. Therefore, the two

children of the second respondent born in her lawful wedlock with Sudhakar Daniel alone are entitled to inherit the property.

6. The petitioner has not produced any document even before this Court to substantiate his contention that he has got interest in the property left by Sudhakar Daniel. I am therefore of the view that the learned Judge was correct in dismissing the application.

7. The background facts indicate that the property belongs to the minors. However, the minors were not impleaded by the first respondent in the suit in O.S.No.26 of 2014. Since the property absolutely belongs to the minor children of deceased Sudhakar Daniel, necessarily, they have to be impleaded as parties. The second respondent is entitled to represent the minors in her capacity as biological mother. However, the suit should be in the name of minors.

8. The learned Judge is directed to call upon the first respondent to implead the minors as party to the Civil Suit. The minors should be represented by the second respondent. The Court should ensure that the interest of minors protected by the second respondent.

K.K.SASIDHARAN, J.

(svki)

9. The Civil Revision Petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

09.09.2016

Index:Yes/No
svki

To

The District Munsif Court, Mannargudi.

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