



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.10.2016

CORAM:

THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

C.R.P.NPD (MD) No.1894 of 2016

and

C.M.P. (MD) No.9049 of 2016

Santhanamari

... Petitioner

Vs.

1.Marimuthu

2.Gurusamy

3.Vairamuthu

4.Karuppasamy

5.Muthukrishnan

... Respondents

**Prayer:** The Civil Revision petition is filed under Article 227 of the Constitution of India, to direct the Sub Judge, Sivakasi to number the unnumbered E.A.No.3841 of 2016 in E.P.No.15 of 2008 in O.S.No.56 of 2006 and pass orders on merits and in accordance with law.

For Petitioner : M/s.Lakshmi Gopinathan

For Respondents : Mr.S.Subbiah

### ORDER

The petitioner has filed the above Civil Revision Petition before this Court praying to number the unnumbered E.A.SR.No.3841 of 2016 in E.P.No.15 of 2008 in O.S.No.56 of 2006 on the file of the Sub Court, Sivakasi and pass orders on merits and in accordance with law.

2.According to the petitioner, she has filed an application in unnumbered in EA.S.R.No.3841 of 2016 in E.P.No.15 of 2008 in O.S.No.56 of 2006 before the Sub Court, Sivakasi. The said application was returned by the Sub Court, Sivakasi pointing out certain defects namely,

"1.How this petition is maintainable u/s.47 of CPC  
to be stated.



2.petitioner brothers namely proposed 4<sup>th</sup> and 5<sup>th</sup> respondent filed O.S.No.63 of 2008 against the respondents 1 and 2 and proposed 3<sup>rd</sup> respondent for partitioning their 2/4<sup>th</sup> share in the schedule property and it was demined on 10.08.2009. Hence how this petition is maintainable to be stated.

3.In E.A.123 of 2010 and in the counter filed by the petitioner's father it is stated that after the evidence of sale agreement dated 08.05.2003 the 1<sup>st</sup> respondent know that the property is an ancestral property and no he got sale deed from him and the other legal heirs on 29.09.2003 and no E.A.68 of 2010 is not maintainable and it has to be clarified.

4.The petitioner stated that her grand father orally partitioned the properties before 17 years and there the schedule property was allotted to the petitioner's father. Hence how the petitioner has share over the said property to be explained.

5.Date of death of Velusamy Devar to be stated.

6.Legal heir certificate to be produced.

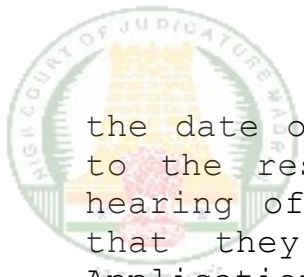
7.Fresh fly sheet to be attached."

3.According to the petitioner, she was not at all a party in the above said suit. Therefore, the said judgment and decree passed against the petitioner will not bind on her. Hence, the application has been filed under Section 47 of C.P.C.

4.Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials on record.

5.The above said defects pointed out by the Trial Court can be decided after numbering the said application. Hence, in the interest of justice, I am inclined to pass the following orders:

The Trial Court is directed to number the Execution Application in E.A.SR.No.3841 of 2016 if the petitioner has complied except serial no.7 of the return made on 01.08.2016. In respect of the other issues are concerned, without prejudice to the right of the respondents, the Sub Court, Sivakasi is directed to number and decide all the issues after numbering the Execution Application and dispose the same within a period of 3 months from



the date of receipt of a copy of this order. Liberty is granted to the respondents to raise all the objections at the time of hearing of the instant application. Both the counsels undertake that they will cooperate with the disposal of the Instant Application.

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6.The Civil Revision Petition is disposed of with the above said observations. No costs. Consequently, connected C.M.P.is closed.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar

To

1 The Subordinate Judge,  
Sivakasi

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

+1 cc to M/S.POLAX LEGAL SOLUTIONS, SR.NO.62716

**C.R.P.NPD(MD)No.1894 of 2016**  
**21.10.2016**

**SMA/CK/15.11.2016:3P/4C**