



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2016

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP (MD).No.531 of 2016 and CMP(MD).No.2255 of 2016

John Andrews : Petitioner

Vs.

Kannimariyal(died)

1. Elizabeth
2. Selvam Ammal
3. Arockiyam Ammal
4. Indhra
5. Grace
6. Chinnathambi
7. Jimthala
8. Karthick
9. Ravi

: Respondents

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India against the docket order passed in un-numbered I.A.SR.No.1520 of 2015 in I.A.No.8 of 2014 in O.S.No.301 of 1995 on the file of District Munsif Court, Muthukulathur, dated 15.06.2015.

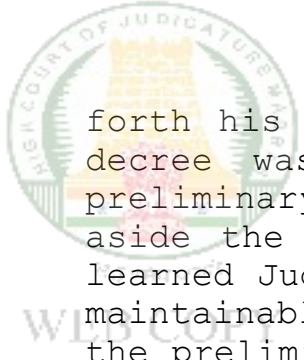
For Petitioner

: Ms. M. Krishnaveni

ORDER

The Civil Revision Petition is filed against the docket order passed in un-numbered I.A.SR.No.1520 of 2015 in I.A.No.8 of 2014 in O.S.No.301 of 1995 on the file of District Munsif Court, Muthukulathur, dated 15.06.2015.

2. The revision petitioner is the first defendant in the suit. One Kannimariyal, first respondent filed a suit in O.S.No.301 of 1995 for partition claiming 7/15 shares in the suit property. The petitioner did not contest the suit, preliminary decree was passed. The respondent filed an application for passing final decree. At that stage, the petitioner filed un-numbered I.A.SR.No.1520 of 2015, claiming $\frac{1}{2}$ share, as per the <https://hcrs.courts.gov.in/hcrs/> and prayed for deletion of $\frac{1}{2}$ share in the suit property belonging to the petitioner. The learned Judge returned the application on the ground that the petitioner did not put



forth his right under Will and contest the suit. The preliminary decree was passed and the petitioner has not challenged the preliminary decree and did not initiate any proceedings to set aside the order of the learned Judge. In the circumstances, the learned Judge held that application filed by the petitioner is not maintainable on the ground that the petitioner has not challenged the preliminary decree, if at all the petitioner has any claim, he can make under Section 47 of CPC in the execution proceedings. Against that said order, the present revision petition is filed.

3. The learned counsel for the petitioner contended that as per Registered Will dated 25.10.1998, the petitioner has right and $\frac{1}{2}$ share in the suit property. The said Will can be marked only by let in evidence. Without giving an opportunity to the petitioner, if final decree is passed, the petitioner will be put to irreparable loss and hardship. The learned Judge ought to have passed judicial order, after considering the registered Will.

4. I have heard the learned counsel appearing for the petitioner and perused the materials available on record.

5. From the materials available on record it is seen that the ex parte preliminary decree was passed. Against that preliminary decree the petitioner did not file any appeal and he has not challenged the ex parte decree. In the circumstances, the claim of the petitioner as per the Will cannot be considered in the Final Decree proceedings. The learned Judge considered all these aspects and rejected the application filed by the petitioner in proper perspective and has given valid and cogent reasons for dismissing the Interlocutory Application. Further the learned Judge has exercised his power conferred on him properly and there is no irregularity or illegality warranting interference by this Court.

6. In the result, the Civil revision petition is dismissed confirming the docket order dated 15.06.2015, passed in un-numbered I.A.SR.No.1520 of 2015 in I.A.No.8 of 2014 in O.S.No.301 of 1995 on the file of District Munsif Court, Muthukulathur. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub-Assistant Registrar

To
The District Munsif , Muthukulathur.
trp

<https://hcservices.courts.gov.in/CaseDetails/28/3/2016>

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