



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.08.2018

CORAM

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

WEB COPY

C.R.P.PD[MD]No.105 of 2016

and

C.M.P.[MD]No.473 of 2016

K.Arumuga Nainar

: Petitioner

Vs.

1.K.Sulochana

2.K.Kashthoori Uthayakumari

: Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order passed in I.A.No.243 of 2014 in O.S.No.177 of 2012 dated 02.07.2015, on the file of Principal Subordinate Court, Tirunelveli.

For Petitioner : Mr.H.Arumugam

For Respondent No.1 : Mr.R.T.Arivukumar

For Respondent No.2 : No appearance

ORDER

The revision petitioner filed O.S.No.177 of 2012 on the file of the Subordinate Court, Tirunelveli, seeking the relief of partition of separate possession. The defendants in the said suit are his own sisters. The defendants filed their written statement claiming that the property in question had already been settled in their favour by the father. Thereafter, the revision petitioner claims that he made search of the encumbrances over the property in the Registrar's office. He then became aware that the father had cancelled the settlement deed earlier executed in his favour. Since the suit suffered from a formal defect, he wanted to withdraw and file a fresh one for the same cause of action. To this effect, he filed I.A.243 of 2014. The said Interlocutory Application was dismissed by order dated 02.07.2015. The correctness of the said order is questioned in this Civil Revision Petition.

2.Heard the learned Counsel on either side.

3.The learned Counsel for the respondents wanted this Court to sustain the order impugned in this Civil Revision Petition.

4.The Court below has not adverted to Order XXIII Rule 1 of the Code of Civil Procedure at all while dismissing the Interlocutory Application in question. The Court below has merely stated that the revision petitioner had filed the Interlocutory Application for withdrawing the suit filed by the revision petitioner. This Court can very well see that the suit in question suffers from a formal defect and therefore, it clearly falls within Order XXIII Rule 1(3).



In this view of the matter, the order impugned in this Civil Revision Petition is set aside.

5. The Civil Revision Petition is allowed, accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

WEB COPY

/True Copy/

Sd/-
Assistant Registrar(Crl.side)

Sub Assistant Registrar(CS-III)

To
The Principal Subordinate Judge,
Tirunelveli.

+1CC to Mr.H.Arumugam, Advocate, SR.No.80140

C.R.P.PD[MD]No.105 of 2016
24.08.2018

MR
ES/PM/SAR 3/03.10.2018/2P/3C