



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P (MD) (NPD) .No.1635 of 2013

and

M.P (MD) .No.1 of 2013

Vedhanarayanan ... Petitioner/Petitioner/Appellant
Vs.

- 1.Radhakrishnan
- 2.Rajalakshmi
- 3.Janarthanam
- 4.Revathi
- 5.Revathi
- 6.Rajalakshmi
- 7.Manivannan
- 8.Saraswathi (Died)
- 9.Sakunthala

10. The Karur Vysya Bank Limited,
Central Branch,
Jawahar Bazaar,
Karur Town.

11. Indian Bank,
Now at Kovai Road,
Karur Town.

12. The Karur Rama Vilas Corporation,
830, Jawahar Bazaar, Karur Town.

13. The Lakshmi Vilas Bank Limited,
Administrative Office,
Kadhapparai, Vennaiimalai Post,
Karur Taluk.

... Respondents/Respondents/Defendants
in O.S.No.592 of 2007

PRAYER : Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 25.02.2013 in I.A.No.524 of 2012 in A.S.No.106 of 2011 on the file of Additional Subordinate Judge, Karur.

For Petitioner	: Mr.K.Govindarajan
For R4, R11 & R12	: No appearance
For R2, R3 and R5	: No appearance
For R9	: Mr.K.Prabhakar
For R13	: Mr.Pala Ramasamy
R1, R6, R7 & R10	: Ex-party
R8	: Died

**ORDER**

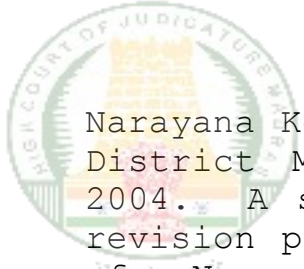
This Civil Revision Petition has been filed by the appellant in A.S.No.106 of 2011 as against the order passed by the learned Additional Subordinate Judge, Karur, in I.A.No.524 of 2012 in A.S.No.106 of 2011.

2.The petitioner/appellant/plaintiff filed a suit in O.S.No.592 of 2007 on the file of the District Munsif Court, Karur, for partition of 'A' and 'B' schedule properties and for allotment of $\frac{1}{4}$ share in the suit 'A' and 'B' schedule properties and also to direct the defendants to deliver the possession of suit 'A' schedule properties and to hand over the proportionate amount in suit 'B' schedule properties and also for permanent injunction restraining the defendants 1 to 8 from creating any document in respect of suit schedule properties either by encumbering the suit properties or otherwise.

3.The suit filed by the revision petitioner/appellant/plaintiff was dismissed and the revision petitioner has preferred an appeal in A.S.No.106 of 2011 on the file of the Subordinate Court, Karur. During the pendency of the appeal, the revision petitioner has filed an application in I.A.No.524 of 2012 under Order 23 Rule 1 Section 151 CPC, to permit the revision petitioner to withdraw the suit in O.S.No.592 of 2007 on the file of the Additional District Munsif Court, Karur, with liberty to file a fresh suit on the same cause of action. The lower Court dismissed the said application mainly on the ground that the revision petitioner's application for passing a supplementary decree in the previous suit in O.S.No.238 of 2004 was also dismissed holding that the Will relied upon by the revision petitioner was disbelieved and that the revision petitioner is not entitled to rely upon the Will to get any right in the suit property.

4.The brief facts, which are necessary for appreciating the rival contention of the parties before this Court, are as follows:-

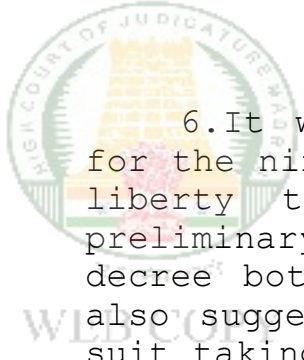
The revision petitioner is the son of one Narayana Konar, who possessed substantial properties. The said Narayana Konar had 4 sons, by name, Vedhanarayanan, the revision petitioner herein, Jeganathan, Radhakrishnan and Venugopal and one daughter, by name, Sakunthala. In a suit filed by one of the sons, by name, Jeganathan in O.S.No.167 of 1998, a preliminary decree was passed on 19.01.2001, granting $\frac{1}{6}$ share to Narayana Konar/the father and each of his children and dismissed the suit only in respect of certain item of properties holding that they are self acquired properties of Narayana Konar. It is not in dispute that on 04.05.2001, the said Narayana Konar died. After the death of



Narayana Konar, the suit in O.S.No.167 of 1998 was transferred to District Munsif Court, Karur and re-numbered as O.S.No.238 of 2004. A subsequent suit in O.S.No.592 of 2007 was filed by the revision petitioner for partition of the self acquired properties of Narayana Konar based on a Will dated 22.03.2001, which is alleged to have been executed by Narayana Konar. As per the Will relied upon by the revision petitioner, his father Narayana Konar dealt with his entire self acquired properties and his ancestral properties as allotted to him in the previous suit and gave equal shares all his four sons by excluding his wife and daughter. Meanwhile, the revision petitioner, after the institution of the suit in O.S.No.592 of 2007, filed an interlocutory application in I.A.No.610 of 2008 in O.S.No.238 of 2004 for passing a supplementary preliminary decree as per the Will dated 23.03.2001. The suit filed by the revision petitioner in O.S.No.592 of 2007 was dismissed by the trial Court on 16.12.2010 holding that the Will dated 23.03.2001 is not proved in a manner known to law. It was further observed that it is open to the revision petitioner to seek appropriate relief in O.S.No.238 of 2004 under Order 20 Rule 18(2) C.P.C. The trial Court also dismissed I.A.No.610 of 2008, in the light of the finding in O.S.No.592 of 2007, regarding the genuineness of the Will dated 23.03.2001. The trial Court also observed that it is open to the revision petitioner to agitate his right in final decree proceedings. The revision petitioner has filed an appeal in A.S.No.106 of 2011 as against the judgment and decree in O.S.No.592 of 2007 before the Subordinate Court, Karur. During the pendency of appeal, the revision petitioner has preferred I.A.No.524 of 2012 to withdraw the suit with a liberty to file a fresh suit on the same cause of action and the same was also dismissed by order dated 25.02.2013 on the simple ground that there is no formal defect involved in this case. Against the order passed by the lower Court in I.A.No.524 of 2012, the above civil revision petition was preferred by the revision petitioner.

5. Though the learned counsel appearing for the ninth respondent contested this civil revision petition on merits and all other legal issues, the fact that the revision petitioner is entitled to succeed to the estate of his father in respect of his self acquired property, is not disputed by him. If that is so, even assuming that the Will set up by the revision petitioner is held to be concocted and not proved in accordance with law, the revision petitioner's right to 1/6 share under Section 8 of Hindu Succession Act, can not be denied. However, it is also not in dispute that the suit properties are also the subject matter of the suit in O.S.No.238 of 2004. After the death of the revision petitioner's father/Narayana Konar, the shares of properties that belonged to the father can always be distributed among all the legal heirs. It is to be noted that the revision petitioner has

severed his portion of his 1/6 share that was allotted to the father in the earlier partition suit.



6.It was further suggested by the learned counsel appearing for the ninth respondent that the revision petitioner may be given liberty to approach the trial Court to pass supplementary preliminary decree in O.S.No.238 of 2004, so that, a comprehensive decree both preliminary and final decree can be passed. It is also suggested by counsels that the final decree in the earlier suit taking into account the subsequent event namely, the death of the father, will be convenient even with regard to allotment of properties by applying equitable principles in favour of the individual sharers. For all the above reasons, the Civil Revision Petition is liable to be dismissed. However, liberty is given to the revision petitioner to file an application for passing a supplementary or comprehensive final decree in O.S.No.238 of 2004 claiming 1/6 shares in the self acquired properties of father of the revision petitioner, which are also the subject matter of suit in O.S.No.238 of 2004. Parties are at liberty to approach this Court, if there is any difficulty in implementing this order.

7.With the above observations and liberty, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The Additional Subordinate Judge,
Karur.
2. The Record Keeper, (2 copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.K.Prabhakar, Advocate Sr.No.70083
+1cc to Mr.K.Govindarajan, Advocate Sr.No.70109
+1cc to Mr.Pala Ramasamy, Advocate Sr.No.70051

RMK

VB/SKN/SAR1/12.10.2018/4P/7C

**C.R.P (MD) (NPD) .No.1635 of 2013
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**M.P (MD) .No.1 of 2013
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