



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.08.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (PD) (MD)No.617 of 2020
and
C.M.P. (MD)No.4009 of 2020

S.Subramanian : Petitioner/Petitioner/3rd Party

.. Vs ..

R.Kamala (Died)

- 1.Mani
- 2.Gowri
- 3.Yoga @ Yogambal
- 4.Siva @ Sivaraman
- 5.Sankar
- 6.Meenakshi
- 7.Buvana @ Bhuvaneswari

Pappu @ Kamatchi (Died)
S.Muthukrishnan (Died)
S.Meenakshisundaram (Died)
Annammal (Died)
Visalakshi (Died)

- 8.Subramanian
- 9.Srinivasan
- 10.Jeyalakshmi
- 11.Chandramayee
- 12.Chandrasekar
- 13.Bhuvaneshwari

: Respondents 8 to 13/
Respondents 8 to 13/Respondents 8 to 13

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the orders passed by the learned Principal Subordinate Judge, Pudukottai, in I.A.No.391 of 2019 in O.S.No.7 of 1992, dated 05.12.2019.

For Petitioner :Mr.V.Singan

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ORDER

This Civil Revision Petition is directed against the order passed by the learned Principal Subordinate Judge, Pudukottai, in I.A.No.391 of 2019 in O.S.No.07 of 1992, dated 05.12.2019.

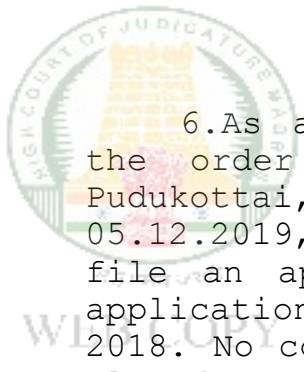
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2.The revision petitioner is a third party to the suit in O.S.No.07 of 1992 on the file of the Principal Subordinate Court, Pudukottai. The suit in O.S.No.07 of 1992 was filed for partition and a preliminary decree had already been passed. After the preliminary decree was passed, an application in I.A.No.185 of 2007 was filed for passing of final decree. In the said application, the revision petitioner filed an application in I.A.No.391 of 2019 to implead himself as party.

3.In the affidavit filed in support of that petition, the petitioner claims independent title to the property, which is the subject matter of the suit in O.S.No.07 of 1992. In such circumstances, the trial Court dismissed the application by holding that the property described in the plaint is different from the property, to which the petitioner claims title and that the petitioner, who is not a party and who is not claiming any right under any of the parties to the suit in O.S.No.07 of 1992, need not be impleaded himself as party. Aggrieved by the same, the present petition is filed.

4.The trial Court is right in dismissing the petition to implead the revision petitioner, who is a third party and who does not claim any right under any of the parties to the suit for partition. The final decree application in I.A.No.185 of 2007 is a continuation of suit and the Court in a final decree cannot go behind the preliminary decree. The final decree petition is now sought to be contested by the revision petitioner on the ground that he had independent right in the suit property and that therefore, the suit for partition is not binding on him. Since the revision petitioner is not a party to the partition suit, any decree or preliminary decree or final decree passed in the said suit is not binding on him.

5.It is also admitted that in order to protect the petitioner's property, the petitioner has also filed separate suit in O.S.No.137 of 2018 before the Principal Subordinate Court, Pudukottai. In such circumstances, the application to implead himself as party in the final decree proceedings in a suit for partition by strangers is unnecessary, unwarranted and unsustainable. It will be also in the interest of revision petitioner not to get himself impleaded in the suit for partition. When he establishes his independent title in the suit filed by him, his right will be protected. Hence, there is no legal injury to the petitioner by dismissing the application filed by him to implead him as party to the suit for partition.



6.As a result, this Civil Revision Petition is dismissed and the order passed by the learned Principal Subordinate Judge, Pudukottai, in I.A.No.391 of 2019 in O.S.No.07 of 1992, dated 05.12.2019, is confirmed. It is open to the revision petitioner to file an application to implead the parties to the final decree application as parties in the suit filed by him in O.S.No.137 of 2018. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

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/ /2020

Sub Assistant Registrar(CS)

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To

1.The Principal Subordinate Judge,
Pudukottai.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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