

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.07.2021**

Coram

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (PD) No. 559 of 2021

And

C.M.P.No. 4767 of 2021

K.Mageshwaran ... Petitioner/Petitioner/3rd defendant

-Vs-

M.Premavathy ... Respondent / Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 17.08.2020 made in unnumbered I.A. (S.R.No. 51518) in O.S.No.12593 of 1996 on the file of IV Assistant Judge, City Civil Court at Chennai.

For Petitioner : Mr. M.Devendran

For Respondent : Mr. S.Gurumoorthy

ORDER

This Revision Petition has been filed questioning the order dated 17.08.2020 made in unnumbered I.A. (S.R.No. 51518) in O.S.No.12593 of 1996 on the file of IV Assistant Judge, City Civil Court at Chennai.

2. The said application has been filed by the third defendant under Sections 2 & 3 of the Indian Partition Act, seeking permission to the petitioner therein to purchase the plaintiff's share in 'B' schedule property which share had been determined in a final decree dated 04.08.2009 in I.A.No. 12446 of 2000 and which has also been confirmed in A.S.No. 252 of 2010 by the I Additional Court, City Civil Court, Chennai. The Court appears to have rejected the said application even without taking it on file.

3. The basis on which the said application had been filed was the order of this Court in C.R.P.No. 3743 of 2008 wherein this Court had held that it was open to the petitioner/third defendant/revision petitioner to file appropriate application under Sections 2 & 3 of the Indian Partition Act.

4. Once any Interlocutory Application is filed, an obligation is also cast on the learned Judge to examine it and thereafter issue notice on the same and invite a counter to be filed and thereafter pass the judicial order. Rejecting it on the threshold will not serve any purpose. I would therefore interfere with the order passed and if the petition is otherwise in order, call upon the IV Assistant Judge, City Civil Court, Chennai, to number the application and thereafter, proceed in the manner known to law and finally, pass a considered order in the Interlocutory Application.

5. With the above observation, this Civil Revision Petition is allowed with the said direction to the IV Assistant Judge, City Civil Court, Chennai, as aforesaid. No order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

09.07.2021

vsg

Index: Yes/No

Internet: Yes/No.

Speaking / Non speaking

C.V.KARTHIKEYAN, J.

vsg



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