

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.10.2021

PRONOUNCED ON : 22.10.2021

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(P.D)No.1361 of 2021

and

C.M.P.No.10578 of 2021

R.Sivasubramaniyan

...Petitioner

Vs.

1.R.Periasamy

2.G.Guhan

3.Hemalatha Mutukumar

4.Arulmigu Bhaghavathiamman Deity,
Represented by Dharmakartha K.S.Shanmugam,
Kalvettuppalayam,
Vengumbur Village Erode Taluk.
(Set-Exparte in the suit by an order Dt.05.09.2014 of the 1st
Add.District Court, Erode)

5.Arulmigu Akkaraipatti Ponkaliasman,
Arulmigu Akkaraipatti Muthusamy and
Arulmigu Molipili Annamar Swami Deities
Represented by the Executive Officer,
Arulmigu Varadharaja Perumal Vagaiyara Thirukkoil Devasthanam
Vengumbur Village, Erode Taluk. ...Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair order and decretal order dated 25.03.2021, passed by the Hon'ble I Additional District Court, Erode in I.A.No.249 of 2015 in O.S.No.156 of 2014 and consequently stay all further proceeding in the O.S.No.156 of 2014 on the file of the I Additional District Court, Erode till the proceeding in the O.P.No.163 of 2013 and in O.S.A.No.276 of 2019 on the files of Hon'ble High Court of Madras is disposed.

For Petitioner : Mr.V.Lakshminarayanan

For Respondents : Mrs.Chitra Sampath (Senior Counsel) for Mr.T.S.Baskaran

ORDER

This Civil Revision Petition is filed challenging the order passed in I.A.249 of 2015 in O.S.No.156 of 2014 by the learned I Additional District Judge, Erode. The first respondent filed O.S.No.156 of 2014 on the file of the I Additional District Court, Erode for the relief of partition of A Schedule properties into four equal shares and allotting two shares contiguously; partition of B Schedule property into 16 equal shares and allotting six shares contiguously to the plaintiff; granting permanent injunction restraining the petitioner/first defendant from alienating and encumbering the suit properties till the partition takes

place. The suit was filed against the petitioner and four others. The petitioner filed I.A.No.249 of 2015 under Section 10 and 151 of C.P.C., for staying the further proceedings in O.S.No.156 of 2014 till the disposal of O.P.No.163 of 2013 pending on the file of this court and till it attains finality. This petition was dismissed by the learned I Additional District Judge, Erode. Against the said dismissal order, this Civil Revision Petition is preferred.

2.The learned counsel for the petitioner submitted that the petition in O.P.No.163 of 2013 was filed under Section 10 of the Administrators General Act, 1963 r/w Order XXV, Rule 42 of the Original Side Rules. This petition was filed against the plaintiff in O.S.No.156 of 2014, Periyasamy and seven others including defendants 2 and 3 in O.S.No.156 of 2014. O.P.No.163 of 2013 was filed by the petitioner and three others to take possession of the assets of the estate of K.S.Ramasamy (since deceased) situated within the state of Tamil Nadu and to hold, deposit and realise, sell or invest the same according to the provisions of the said Act and with the further direction under

Section 10 (2) of the Act to file and prosecute such suits or take such proceedings as the Administrator General may deem appropriate for the recovery of any assets, bank deposits, money, movable or immovable of the estate of the deceased.

3.The circumstances,leading to filing of this petition, in brief, are as follows: The deceased K.S.Ramasamy died on 16.11.2010. The petitioner, in his capacity as a son of the deceased and as one of the persons interested in the assets of the deceased and also interested in due administration of the estate of the deceased, filed this petition. The assets left behind by the deceased are very large and of considerable value consisting of 1) Agricultural land, 2) Agricultural land cum house sites, 3) Houses, buildings, sheds, godown, 4) Cash 5) Bank deposits 6) Motor vehicles, car, tractors, agricultural machineries, diesel engines, electric pump sets and other numerous movables. All these assets are not only facing danger of misappropriation, deterioration and waste at the hands of the respondents 1 and 2, but they also continuously misappropriate the properties and allow it to get wasted. Assets worth more than

Rs.20,00,000/- have already been forcibly taken by the first respondent and misappropriated for his personal purpose. The estate of a deceased person is a legal entity. After demise of K.S.Ramasamy, all his properties would not automatically become the properties of his legal heirs. It becomes a separate legal entity called "Estate of K.S.Ramasamy". After partition of all the landed properties between the deceased and his two sons in 1970, the deceased was cultivating his share of 10 acres of land till 2009. Petitioner's parents were living in their ancestral house. After the first respondent's marriage, parents were driven out to cattle shed. Deceased father was admitted in GKNM Hospital, Coimbatore on 05.06.2009 and took treatment as in-patient for two months. During the absence of deceased, first respondent and his wife occupied the house of the deceased. First respondent and his wife intimated the deceased and the petitioner to settle the house in his favour. First respondent got the house settled in his favour on 05.10.2009. He made the petitioner to execute a sale deed with respect to some of his properties at throw away price. In June 2010, deceased entrusted with the petitioner the administration of all of his movable and immovable properties. The

deceased, unable to maintain his bank account, converted his individual bank account as joint account by adding petitioner's name on 15.09.2010. His father's health condition was not informed to him and when he visited him on 27.10.2010, he found that his father was not able to speak. His father was admitted at KMCH Hospital, Erode for treating his leg injury. His father informed him that first respondent had beaten him when he refused to sign the paper/will conveying all his properties to him. Despite petitioner's best efforts, he could not save his father. He is facing threat from the first respondent. During the month of March 2011, petitioner made an arrangement to receive turmeric from the tenants and sell it to the "Erode Agricultural Producers Co-operative Marketing Society Limited". First respondent forcibly seized the entire turmeric delivered by the tenants and prevented the petitioner from sending it to the Society. First respondent sold the turmeric for Rs.13,00,000/- When the petitioner was contemplating police action, first respondent informed through his friend Mr.Mani, that turmeric was sold for Rs.3,30,000/- and deposited the amount in the bank account. The first respondent has caused considerable loss and damage to the

estate of the deceased. Subsequent, to the death of deceased, the efforts made by the petitioner to manage the estate honestly, fairly, in an orderly and in proper manner to the best advantage of all concerned, destroyed by the first respondent by force, coercion and threat. First respondent and his wife with the help of their men, misappropriating and wasting the valuable movable assets. Since, the death of father, the first respondent is making continuous attempt to grab all the properties of the deceased by illegal means. Petitioner is a cardiac patient and the first respondent is trying to eliminate the petitioner somehow, so that he can grab all the properties. Unsuccessful attempt was made to assault the petitioner on 02.12.2010. Petitioner suspects that the first respondent might have misappropriated the amounts invested by the deceased father in The Catholic Syrian Bank Limited, Kodumudi. Respondents 1 and 2 are keeping more than Rs.10,00,000/- belong to the estate of the deceased. The estate of deceased K.S.Ramasamy is facing a grave danger from respondents 1 and 2 and their men. Therefore, the petition.

4.He further submitted that when O.P.No.163 of 2013 is

pending before this Court with regard to administration of properties of deceased K.S.Ramasamy, further proceedings in O.S.No.156 of 2014 cannot be continued. Therefore, petition in I.A.No.249 of 2015 was filed under Section 10 of C.P.C., for staying further proceedings in O.S.No.156 of 2014 till O.P.No.163 of 2013 is finally disposed. However, without considering the issue in proper perspective, the learned I Additional District Judge, Erode, has dismissed the petition. The dismissal is not correct for the reason that if O.P.No.163 of 2013 is decided in favour of the petitioner, the partition suit in O.S.No.156 of 2014 has to necessarily fail. It is just and appropriate that the further proceedings in O.S.No.156 of 2014 is stayed. Thus, the learned counsel for the petitioner prayed for setting aside the order passed in I.A.No.249 of 2015 and for allowing the petition.

5.In response, the learned senior counsel for the first respondent submitted that the matter in dispute involved in O.P.No.163 of 2013 and in O.S.No.156 of 2014 are entirely different. O.S.No.156 of 2014 was filed seeking the relief of partition. Petitioner and respondents

1 to 3 are the legal heirs of the deceased K.S.Ramasamy Gounder. “A” schedule properties are treated as the self acquired properties of K.S.Ramasamy. These properties are ancestral properties of petitioner and respondents 1 to 3. When there are direct legal heirs to succeed to the properties of the deceased K.S.Ramasamy, filing of petition under Section 10 of the Administrators General Act 1963 is not correct. This Court, after an elaborate enquiry dismissed O.P.No.163 of 2013 on 02.07.2019. Petitioner has filed I.A.No.248 of 2015 in O.S.No.156 of 2014 for rejection of plaint and filed C.R.P.No.2960 of 2017 under Article 227 of the Constitution of India to strike off the plaint in O.S.No.156 of 2014. The petition to reject the plaint in I.A.No.248 of 2015 was dismissed. Revision filed against the dismissal order in C.R.P.No.3495 of 2017 and C.R.P.No.2960 of 2017 have been taken up for consideration by this Court and this Court confirmed the order passed in I.A.No.248 of 2015 in O.S.No.156 of 2014 and dismissed both the C.R.P's. Filing of petition under Section 10 of Administrators General Act 1963, petition to reject the plaint and strike off the plaint shows that the only intention of the petitioner is to see that the first respondent do

not to get his due share in the suit properties as legal heir of his deceased father. After the death of his father, the suit properties vest on his legal heirs. Legal heirs are entitled for their due share. The issue in O.P.No.163 of 2013 and in O.S.No.156 of 2014 are not the same issues, therefore, I.A.No.249 of 2015 was rightly dismissed. Therefore, the learned counsel for the first respondent prayed for confirming the order of the learned I Additional District Judge, Erode, in I.A.No.249 of 2015 in O.S.No.156 of 2014 and for the dismissal of this Civil Revision Petition.

6. In reply, the learned counsel for the petitioner submitted that the petitioner preferred O.S.A.No.173, 205 and 276 of 2019 against the order passed in O.P.No.163 of 2013 and they are still pending. On 17.02.2020, the matter was referred to Mediation Conciliation Centre. The petitioner preferred W.P.(Civil No.377 of 2021 with SLP (C)No.4822 and 4823 of 2021) before the Hon'ble Supreme Court. It was informed before the Hon'ble Supreme Court that the matter had been referred to mediation. As requested, the matter was ordered to be listed

after twelve weeks on 02.07.2021. The learned counsel for the petitioner submitted that when the matter is referred to mediation and when appeals are pending, it is necessary that proceedings in O.S.No.156 of 2014 has to be stayed under Section 10 of C.P.C.

7.This submission was replied by the learned senior counsel for the respondents stating that though the matter was referred to mediation by this Court, there was no mediation conducted. The first respondent is not interested in mediation. It is submitted by the learned counsel for the first respondent that, this is a suit for partition and the first respondent is willing to take his share alone leaving others shares to respective sharers.

8.There was also an attempt made for settling the dispute before this court. Petitioner filed a proposal for settlement. However, the proposal was not acceptable to the first respondent. The first respondent counsel submitted that the first respondent is willing to take 1/3 share in the A Schedule property and 6/16 share in B Schedule property leaving

the shares entitled for the other sharers. This proposal is not agreeable to the petitioner. In the said circumstances, this matter was taken up for consideration.

9. A memo for adjournment was received from Mr.P.Venkatasubramanian, counsel for 5th respondent in the Registry after the matter was heard and reserved for orders and therefore, the request for adjournment was not considered favourably. 5th Respondent cannot have any better claim than the petitioner.

10.The point to be decided now is whether the further proceedings in O.S.No.156 of 2014 has to be stayed under Section 10 of C.P.C., in view of the pendency of O.S.A.Nos.173, 205, 276 of 2019?

11.O.P.No.163 of 2013 was filed under Section 10 of the Administrators General Act 1963 and Order XXV, Rule 42 of O.S. Rules. Therefore, it is necessary to know the scope of the proceedings under Section 10 of the Administrators General Act 1963.

12. Section 10 of the Administrators General Act 1963 deals with the power of Administrator General to collect and hold assets where immediate action is required. Section 10 reads as follows:

"10. Power of Administrator General to collect and hold assets where immediate action is required.

(1) Whenever any person, has died leaving assets within any State exceeding rupees [ten lakhs] in value, and the High Court for that State is satisfied that there is imminent danger of misappropriation, deterioration or waste of such assets, requiring immediate action, the High Court may, upon the application of the Administrator-General or of any person interested in such assets or in the due administration thereof, forthwith direct the Administrator-General

(a) to collect and take possession of such assets, and

(b) to hold, deposit, realise, sell or invest the same according to the directions of the High Court, and, in default of any such directions,

according to the provisions of this Act so far as the same are applicable to such assets.

(2) Any order of the High Court under subsection (1) shall entitle the Administrator-General

(a) to maintain any suit or proceeding for the recovery of such assets ;

(b) if he thinks fit, to apply for letters of administration of the estate of such deceased person ;

(c) to retain out of the assets of the estate any fees chargeable under rules made under this Act ; and

(d) to reimburse himself for all payments made by him in respect of such assets which a private administrator might lawfully have made".

13.The Administrator General is appointed by the State Government. The right of Administrator General for administration of estates is dealt with under Section 9 of the Act. Section 9 reads as follows:

"Right of Administrator-General to apply for administration of estates

(1) If,

(a) any person has died leaving within any State assets exceeding rupees 1[ten lakhs] in value, and

(b) (whether the obtaining of probate of his will or letters of administration to his estate is or is not obligatory), no person to whom any court would have jurisdiction to commit administration of such assets has, within one month after his death, applied in such State for such probate, or letters of administration, and

(c) (in cases where the obtaining of such probate or letters of administration is not obligatory under the provisions of the Indian Succession Act, 1925), no person has taken other proceedings for the protection of the estate,

the Administrator-General of the State in which such assets are, may subject to any rules made by the State Government, within a reasonable time after he has had notice of the death of such person, and of his having left such assets, take such proceedings as may be necessary to obtain from the High Court letters of administration of the estate of such person.

(2) The Administrator-General shall not take proceedings under this section unless he is satisfied, that there is apprehension of misappropriation, deterioration or waste of such assets if such proceedings are not taken by him or that such proceedings are otherwise necessary for the protection of the assets".

14. Section 11 of the Act deals with grant of probate or letters of administration to person appearing in the course of proceedings taken by Administrator General. Section 11 reads as follows:

"Grant of probate or letters of administration to person appearing in the course of proceedings taken by Administrator-General", If in the course of proceedings to obtain letters of administration under the provisions of section 9 or section 10,

(a) any person appears and establishes his claim

(i) to probate of the will of the deceased ;

or

(ii) to letters of administration as next-of-kin of the deceased and gives such security as may be required of him by law ; or

(b) any person satisfies the High Court that he has

taken and is prosecuting with due diligence other proceedings for the protection of the estate, the case being one in which the obtaining of such probate or letters of administration is not obligatory under the provisions of the Indian Succession Act, 1925 ; or

(c) the High Court is satisfied that there is no apprehension of misappropriation, deterioration, or waste of the assets and that the grant of letters of administration in such proceedings is not otherwise necessary for the protection of the assets ; the High Court shall,

(1) in the case mentioned in clause (a), grant probate of the will or letters of administration accordingly ;

(2) in the case mentioned in clause (b) or clause (c), drop the proceedings ; and

(3) in all the cases award to the Administrator-General the costs of any proceedings taken by him under those sections to be paid out of the estate as part of the testamentary or intestate expenses thereof".

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15. Reading of Section 9 shows that the Administrators General to apply for administration of estates,

(i) if any person has died leaving within any State assets exceeding Rs.10,00,000/- in value,

(ii) if no person to whom any court would have jurisdiction to commit administration of such assets, within a month after death of the person apply for such probate or letters of administration, and

(iii) no person has taken other proceedings for a protection of the estate.

16. Only under these circumstances, the Administrator General may take proceedings to obtain from the High Court letters of administration of the estate of such person. The Administrator General shall not take proceedings under this section unless he is satisfied, that there is apprehension of misappropriation, deterioration or waste of such assets if such proceedings are not taken by him or that such proceedings are otherwise necessary for the protection of the assets.

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17. It is seen from Section 10 that whenever any person has died leaving assets within any state exceeding Rs.10,00,000/- in value,

the High Court if satisfied that there is imminent danger of misappropriation, deterioration or waste of such assets, requiring immediate action, the High Court may upon the application of the Administrator General or of any person interested in such assets or in the due administration thereof, forthwith direct the Administrator General.

a)to collect and take possession of such assets, and

b)to hold, deposit, realise, sell or invest the same according to the directions of the High Court, and, in default of any such directions, according to the provisions of this Act so far as the same are applicable to such assets.

18.It is reiterated that only on the subjective satisfaction of the High Court that there is imminent danger of misappropriation, deterioration or waste of such assets, requiring immediate action, the High Court may upon the application of the Administrator General or of any person interested in such assets or in the due administration thereof, forthwith direct the Administrator General to do the aforesaid acts.

19. Section 11 deals with grant of probate or letters of administration to person appearing in the course of proceedings taken by the Administrator General. This Section makes it clear that, in the course of proceedings under Section 9 and 10, if any person satisfies the Court that he has taken and he is prosecuting with due diligence, other proceedings for the protection of the estate, the case being one in which, the obtaining of such probate or letters of administration is not obligatory under the provisions of the Indian Succession Act, 1925 or the High Court is satisfied that there is no apprehension of misappropriation, deterioration or waste of the assets and that the grant of letters of administration in such proceedings is not otherwise necessary for the protection of the assets, the High Court shall drop the proceedings initiated under Section 9 or 10.

20. Combined reading of Section 9 and 10 makes it clear that only

i) if a person on whom the court would have jurisdiction to commit administration of such assets has, within one month after the

death of the persons leaving the assets, fails to apply for probate or letters of administration,

ii) no person has taken other proceedings for the protection of assets,

iii) if the petitioner satisfies the High Court that there is imminent danger of misappropriation, deterioration or waste of such assets, requiring immediate action, the High Court can direct Administrator General to take over the administration of the estate. In the course of the proceedings before the Administrator General, if any person appears and establishes his claims to

i) letters of administration as next-of-kin of the deceased,

ii) he has taken and is prosecuting with due diligence other proceedings for the protection of the estate, the case being one in which obtaining of such probate or letters of administration is not obligatory under the provisions of Indian Succession Act, 1925,

iii) there is no apprehension of misappropriation, deterioration or waste of assets and that the grant of letters of administration in such proceedings is not otherwise necessary for the protection of assets, the

High Court shall drop the proceedings.

21.In the case before hand, admittedly the deceased K.S.Ramasamy has not executed any will prior to his death. He left behind his wife Karuppayammal, petitioner/first defendant, first respondent/plaintiff, respondents 2 & 3/defendants 2 (grand children). The plaint averments show that the first respondent filed a suit for partition, in respect of A and B schedule properties, claiming 2/4 shares in A schedule property and 6/16 shares in B schedule property. It is claimed in the plaint that A schedule properties are treated as self acquired properties of K.S.Ramasamy Gounder and B schedule properties are ancestral properties of the parties to the suit. Subsequent to the death of K.S.Ramasamy and before filing the suit his wife Karuppayammal died. The first respondent claims that his mother Karuppayammal executed a will in respect of her estate in his favor on 09.04.2013. Therefore, he is entitled to 2/4 share in A schedule properties and 6/16 share in B schedule properties. There is no doubt that K.S.Ramasamy died intestate leaving class I heirs. Immediately on

his death, his properties vested on his legal heirs. It is not obligatory for the legal heirs to obtain letters of administration under the provisions of Indian Succession Act. Any letters of administration granted by the High Court shall be granted to the Administrator-General of the State unless they are granted to the next-of-kin of the deceased. Therefore, an important question arises as to whether, when class I heirs are available and properties had vested on them immediately on the death of K.S.Ramasamy, the petitioner can proceed under Section 10 of Administrators General Act 1963. The reasons according to the petitioner for filing the petition is that the petitioner was omitted from jointly managing and enjoying the suit properties and the other reason is that the respondents 1 to 3 are involved in misappropriating, deteriorating and wasting the properties. Whether the petitioner is able to prove these allegations against the respondents 1 to 3 has to be considered now.

22.This Court has disposed O.P.No.163 of 2013 on 02.07.2019. The contentions raised before this court by both the parties,

in brief, are as follows. On behalf of the petitioner it is contented that,

i)Section 10 of Administrators General Act 1963 empowers the Court to vest the estate in the hands of the Administrator General if it is satisfied that there is imminent danger of misappropriation, deterioration or waste of such assets, requiring immediate action, upon the application by the Administrator General or by any person interested in such estate or due administration thereon. The petitioner, who is the sharer, has been excluded from the enjoyment of the estate and the respondents 1 to 3 are acting in cohesion and are committing acts of waste. Some of the lands are lying vacant without being cultivated and it shows that the respondents are committing acts of waste.

ii)The first respondent has not chosen to account for the cultivation that has been carried by him in the property of deceased K.S.Ramasamy. Non-submission of accounts would justify the appointment of Administrator General.

23.The submissions of the respondents 1 to 3 are that;

i)The proceedings initiated under Section 10 of Administrator General Act 1963 are wholly misconceived and there is no substance in the petition. Out of the income from the family properties, the properties at Anna Nagar and Kilpauk, stand in the name of the petitioner and Karuppayammal were purchased. The first respondent filed suit in O.S.No.156 of 2014 seeking partition and separate possession. The petitioner filed I.A.No.249 of 2015 stay petition in O.S.No.156 of 2014 and also filed transfer petition. Transfer petition was dismissed.

ii)The petitioner has not established that there is likelihood of estate being wasted or that there is imminent threat of misappropriation, deterioration or waste of such assets, requiring immediate action. These conditions are not available in this case for invoking Section 10 of Administrators General Act.

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24.On considering the rival contentions, it was held by Hon'ble Mr.Justice R.Subramanian that;

i)The proceedings under Section 10 of the Administrator General Act is summary in nature and confine only to a question as to whether the estate of the deceased should be vested in Administrator General.

ii)The proceedings under Section 10 of the Administrator General Act is an extraordinary remedy made available to a person interested in the estate to protect the same under certain circumstances. The circumstances that are envisaged are imminent danger of misappropriation, deterioration or waste of such assets, requiring immediate action.

iii)Under Section 11, once a person interested in the estate appears and establishes his claim to probate of the will of the deceased or to letters of administration as next of kin of the deceased or satisfies the court that he has taken and he is prosecuting with due diligence other proceedings for protection of the estate, the High Court is required to drop further proceedings.

iv)K.S.Ramasamy died leaving certain properties and class I heirs. Under Section 8 of Hindu Succession Act, property of male Hindu

who dies intestate vests in his class I heirs immediately upon his death. Therefore on the death of K.S.Ramasamy on 16.11.2010, his estate vested in the petitioner and respondents 1 to 4 who are the sons, grand children and the wife respectively.

v)The intention of the legislature in enacting Section 10 of the Act itself is not to divest the person in whom the property has vested.

vi)If it is demonstrated before the court that a person interested in the estate has taken proceedings to protect the estate and is prosecuting the same with due diligence, the court will have to drop the further proceedings. This requirement would show that the nature of the proceedings contemplated is only for protection of the estate during a transition period and it cannot be permanent.

vii)Estate cannot be vested in the Administrator General when there are class I heirs entitled to succeed to properties under Section 8 of Hindu Succession Act.

viii)Combined reading of Section 10 and 11 of the Act, undoubtedly show that the whole scheme of the Act is to provide for a

preservation of estate to which there is no one to succeed.

ix)Reference from the judgment of the Hon'ble Supreme Court in **(Thayarammal Vs. Kanakammal and others)** reported in **2005 SCC 457** was made to show that power to appoint or the power to vest the estate in the Administrator General can be exercised only when there is none to whom letters of administration could be granted under the Indian Succession Act. After the advent of the Hindu Succession Act, 1956, Section 8 of the Act very clearly provides that the estate of male Hindu who dies intestate shall vest in his class I heirs.

x)In the case on hand, there are atleast five class I heirs, including the petitioner.

xi)The reliefs that are sought for in the application under Section 10 could be effectively sought for under Order 39 and 40 read with Section 151 of the Civil Procedure Code, was held to be a factor to be taken into account while deciding the application under Section 10, as decided in **(Chandra Shekar Dave vs. Administrator General of the State of Rajasthan)**, reported in **2000 SCC online Rajasthan 152**.

xii) Petitioner has not satisfied the requirements of Section 10

to the fact that there is imminent danger of misappropriation or deterioration or waste of estate, requiring immediate action.

xiii).The claim of the petitioner that the respondents 1 to 3 prevented the petitioner from enjoying the properties is stoutly denied by the respondents 1 to 3.

xiv). Petitioner has not filed any applications seeking any accounts either in the original petition or in the partition suit.

xv).The fact that the sharer in possession has not accounted for income, cannot amount to the property being in imminent danger of misappropriation or deterioration or waste of assets, requiring immediate action of this court.

xvi)There is no material to establish the fundamental requirements of Section 10 enabling the court to vest the estate with the Administrator General.

xvii)The object of filing this petition is not one to preserve the estate, but the result of spite and vengeance, the petitioner has against the respondents 1 to 3. On the reasons aforesaid and for other reasons this Court dismissed O.P.No.163 of 2013.

25.I.A.No.249 of 2015 was filed under Section 10 of the C.P.C., to stay the further proceedings in O.S.156/2014 till the disposal of O.P.No.163 of 2013 and it attains finality. O.P.No.163 of 2013 was dismissed on 02.07.2019. The petitioner has submitted that against the order passed in O.P.No.163 of 2013, O.S.A.Nos.173, 205 and 276 of 2019 are filed and pending. Appeal is the continuation of the original proceedings. Therefore, it is submitted on behalf of the learned counsel for the petitioner that till these O.S.A's are disposed, the further proceedings in O.S.No.156 of 2014 has to be stayed.

26.The learned counsel for the petitioner submitted that the learned First Additional District Judge, Erode, after finding that the dispute in O.P.No.163 of 2013 and O.S.No.156 of 2014 is between the same parties; properties in both the matters are one and the same; that O.S.No.156 of 2014 was filed after nineteen months after filing of O.P.No.163 of 2013;first respondent suppressed the pendency of O.P.No.163 of 2013 in the suit; O.P.No.163 of 2013 procedure is in civil

nature; O.S.A.No.173, 205 and 276 of 2019 are continuation of the proceedings of O.P.No.163 of 2013; claim of first respondent is also for possession of the suit properties, the learned I Additional District Judge, Erode, dismissed the stay petition stating that the matter in issue in O.S.No.156 of 2014 is not directly and substantially in issue in the previously instituted O.P.No.163 of 2013 and by applying the finding in C.R.P., that the reliefs sought in both the matters are entirely different and distinct. The aforesaid reasons for dismissing the stay petition are not correct for the reasons that,

i) the issue in both the matters is as to whom, the property is to be entrusted.

ii) the learned I Additional District Judge, Erode, has not considered the whole plaint averments to find out what is the matter in issue directly and substantially in issue.

iii) Entrustment of possession of suit properties is a matter directly and substantially in issue in the relief sought in both the proceedings. Matters need not be identical for granting relief under Section 10 of C.P.C.

iv)It is enough if it is satisfied that the matter in issue shall be directly and substantially in issue in both proceedings and both proceedings are between the same parties. Therefore, the learned counsel for petitioner submitted that the learned I Additional District Judge, Erode, has not considered the matter in proper perspective and dismissed the stay petition.

27.It has been elaborately narrated the facts of case and the relief sought in O.P.No.163 of 2013 and in O.S.No.156 of 2014. O.P.No.163 of 2013 was filed under Section 10 of the Administrator General Act alleging that the respondents 1 to 3 are misappropriating,deteriorating and wasting the properties and excluding the petitioner from jointly managing and enjoying the properties. Primarily on these two grounds, the petitioner prayed for taking over the estate of the deceased K.S.Ramasamy (Administrator General). O.S.No.156 of 2014 was filed by the first respondent impleading other legal heirs of deceased K.S.Ramasamy claiming partition. The maintainability of petition under Section 10 of Administrators General

Act, when there are class I heirs available to succeed to the properties of deceased K.S.Ramasamy is the issue here. In a well considered order, this court in O.P.No.163 of 2013 dismissed the petition stating that petitioner has not made out a case for vesting a properties in the hands of Administrator General. The reason is that there is no imminent danger of misappropriation or deterioration or wasting of estate, requiring immediate action.

28.The whole scheme of the Act is to provide for a preservation of estate to which there is no one to succeed. Here in this case, there are legal heirs to succeed to the properties of the deceased K.S.Ramasamy. Already first respondent filed a suit for partition, which is in a way a proceeding intended for the protection of estate. When the legal heir is prosecuting with due diligence other proceedings for the protection of the estate and it is not obligatory to obtain letter of administration and there is no apprehension of misappropriation, deterioration or waste of assets the High Court has to drop the proceedings. The interest of next-of-kin is given utmost importance.

Only in the absence of next-of-kin of the deceased, proceedings may be taken by the Administrator General. That is not the case here. Class-1 legal heirs of deceased are available to succeed to his estate. The petitioner could very well have sought this relief in partition suit by filing applications under Order 39, 40 and 151 C.P.C.

29. May be possession is sought for in favour of Administrator General in O.P.No.163 of 2013 and in favour of the parties to the suit in O.S.No.156 of 2014, but the reasons for seeking possession is totally different. The issue involved in both of the proceedings is not directly and substantially the same. That apart, according to the case of the first respondent, the B schedule properties are ancestral properties. Petitioner, respondents 1 to 3 have right by birth in 'B' Schedule properties. Assuming that petitioner has a right of filing petition under Section 10, so far as the self acquired properties of K.S.Ramasamy is concerned, he cannot have any right to file a petition under Section 10 of Administrators General Act for entrusting the properties to Administrator General in respect of ancestral properties.

30.As rightly found in order passed in O.P.No.163 of 2013, this petition was filed only to see that the suit properties are not partitioned and shares are not allotted to persons entitled. The petitioner has not only initiated O.P.No.163 of 2013, he has also filed petition to reject the plaint under Order 7 Rule 11 C.P.C., petition to quash plaint in O.S.No.156 of 2013 under Article 227 of the Constitution of India,he filed transfer petition, and in all these attempts, he was met with failures. Again, he is still prosecuting O.P.No.163 of 2013 by filing O.S.A.Nos.173, 205 and 276 of 2019 or in the proceedings before the Hon'ble Supreme Court. There is no stay granted in O.S.A.Nos.173, 205 and 276 of 2019 or in the proceedings before the Hon'ble Supreme Court. Therefore, there is no prohibition to this court for disposing this Civil Revision Petition.

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31.This court in O.S.A.Nos.173, 205 and 276 of 2019 gave opportunity to the parties to settle the dispute through mediation and it

could not be taken forward due to prevailing covid 19 situation and obviously the parties are not genuinely interested in settling the dispute through mediation. Petitioner proposed a settlement with unreasonable terms. That was not agreeable to the first respondent. First respondent claims that he is claiming only his rightful share in the suit properties and nothing more and nothing else. The petitioner is not agreeable for amicable partition. This court finds that taking advantage of his position as an Advocate and the legal knowledge he has, petitioner is trying to put up blocks at every stage to see that the suit properties are not partitioned. Stay petition filed under Section 10 C.P.C. has no merits. In this view of the matter, this court finds no valid reasons to interfere with the order dated 25.03.2021 in I.A.No.249 of 2015 in O.S.No.156 of 2014 passed by the learned I Additional District Judge, Erode and the order is confirmed.

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32.Resultantly, this Civil Revision Petition is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

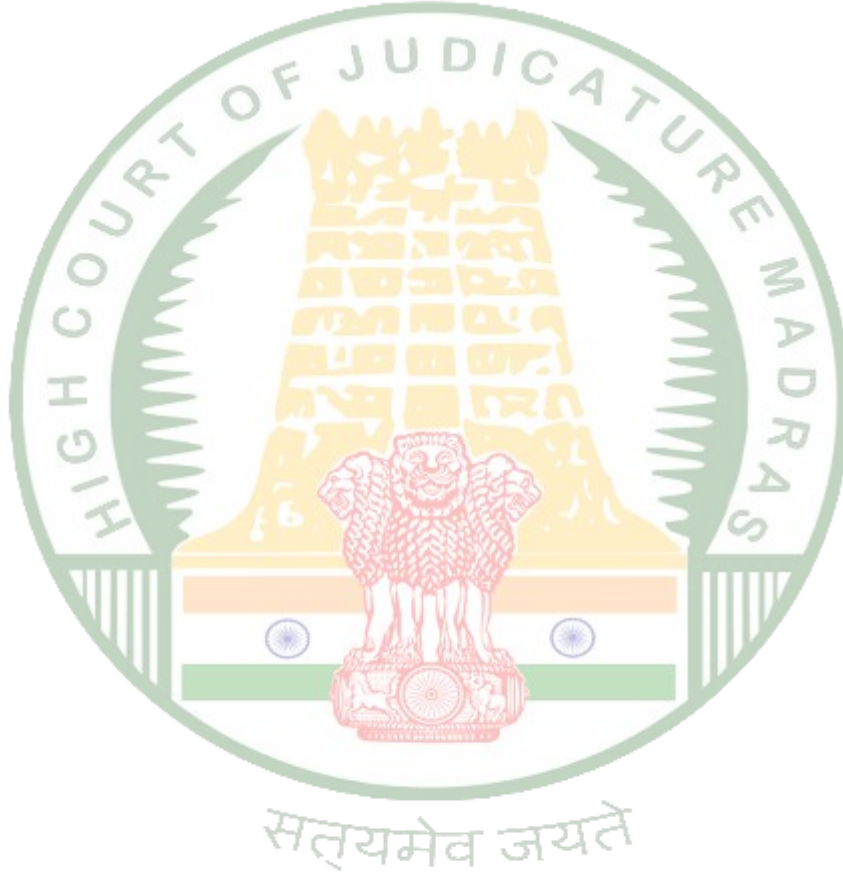
Ep

22.10.2021

Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

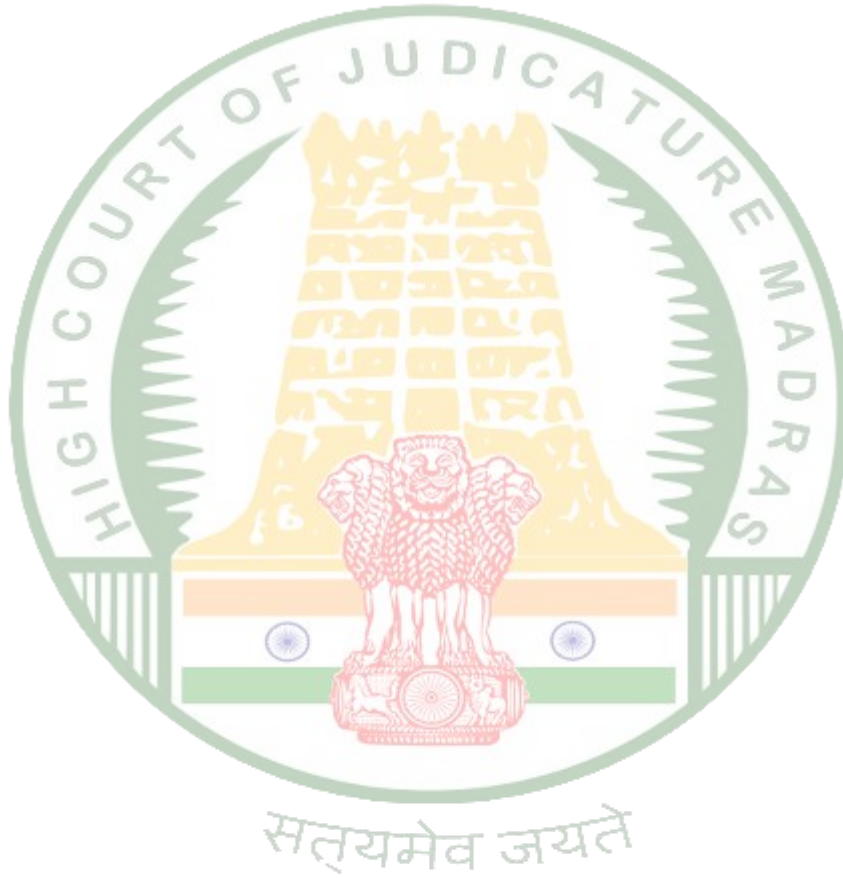


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To

1. The I Additional District Judge,
Erode.

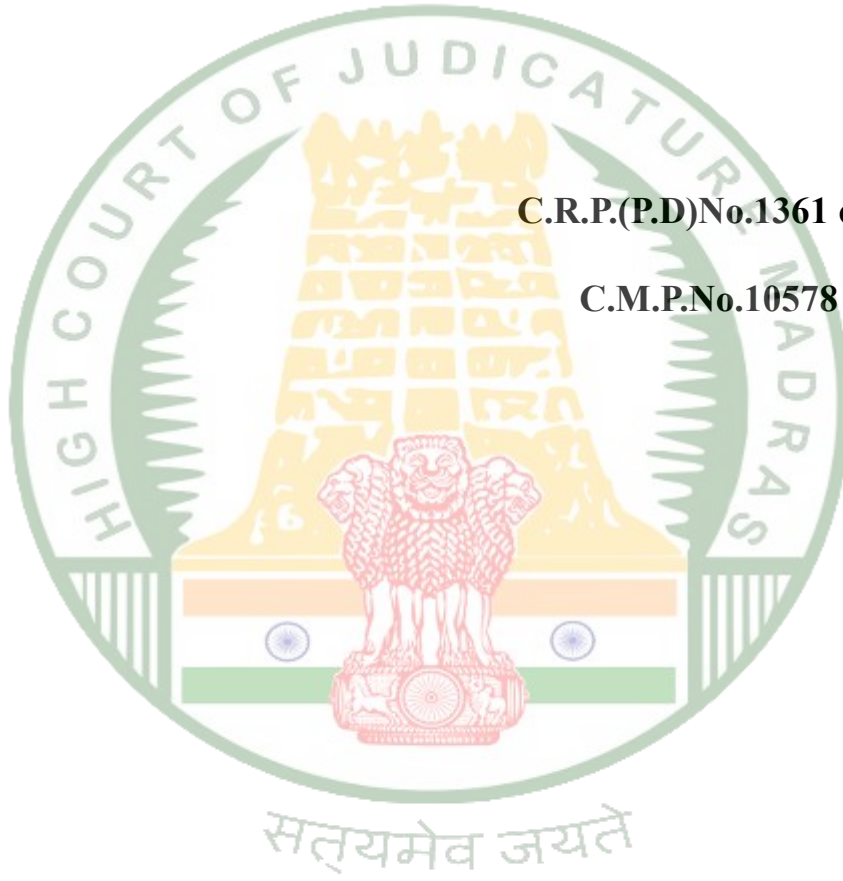
2. The Section Officer,
VR Section,
High Court of Madras.



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G.CHANDRASEKHARAN.J.

Ep



**C.R.P.(P.D)No.1361 of 2021
and
C.M.P.No.10578 of 2021**

WEB COPY 22.10.2021