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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	07.09.2021
DELIVERED ON	17.09.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD) .No.304 of 2021

and

C.M.P. (MD) No.1723 of 2021

C.Arul Thiagarajan ...Petitioner/Respondent
Vs.

1.K.S.Raja Nizath
2.K.S.Prem Nizath ...R-1 & R-2/Petitioners
3.C.Hitler
4.C.Subitha Devi
5.C.Kaladevi
6.S.Rajan
Proprietor of R.S.D. Company.

7.Sriram,
Proprietor of Sriram Sanitary Store.
...R-3 to R-7/R-2 to R-6

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the impugned order passed in I.A.No.1 of 2019 in I.A.No.423 of 1996 filed in O.S.No.130 of 1989 on the file of the I Additional District Munsif Court, Nagercoil, dated 17.12.2019.

For Petitioner : Mr.P.M.Vishnu Varathan
For Respondents : No appearance

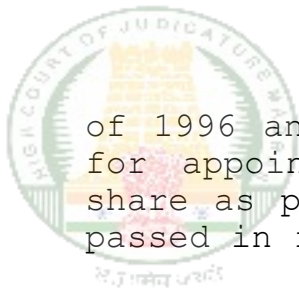
O R D E R

This petitioner/respondent has filed this Civil Revision Petition to set aside the impugned order, dated 17.12.2019 in I.A.No.1 of 2019 in I.A.No.423 of 1996 in O.S.No.130 of 1989 passed by the learned I Additional District Munsif, Nagercoil.

2. Heard the learned counsel appearing for the petitioner and perused the material documents available on record.

3.The Respondents 1 & 2/Petitioners/third parties have filed a petition in I.A.No.1 of 2019 to implead the themselves in I.A.No.423

<https://hcservices.ecourts.gov.in/hcservices/>



of 1996 and the said I.A.No.423 of 1996 was filed by their mother for appointing Advocate Commissioner to effect partition of her share as per the preliminary decree. A final decree has also been passed in favour of their mother as per order, dated 21.04.2004.

4.Originally, the suit in O.S.No.130 of 1989 was filed by one Sakunthala for partition and in the aforesaid suit preliminary decree was passed. Thereafter, a petition in I.A.No.423 of 1996 in O.S.No.130 of 1989 was filed to pass final decree and final decree was also passed.

5.Thereafter, the petitioner herein/1st defendant had filed an appeal in A.S.No.21 of 2005 before the learned Additional Subordinate Judge, Nagercoil, against the final decree. The aforesaid appeal was allowed and the matter has been remanded back to the trial Court to appoint a fresh Advocate Commissioner to effect the partition with the help of surveyor.

6.At this stage, the mother of the respondents 1 & 2 herein/third parties have transferred the properties to one Moses who was impleaded in the final decree petition as per order passed in I.A.No.1175 of 2007 and the same was confirmed by the Order of this Court, in C.R.P(MD)No.2429 of 2014.

7. The mother of the respondents 1 & 2 has filed a petition in I.A.No.423 of 1996 and during the pendency of the petition she died on 07.04.2019.

8.The revision petitioner/1st respondent has not denied the averments that the respondents 1 & 2 herein are not the legal heirs of the deceased G.Sakunthala/petitioner in I.A.No.423 of 1996. As per counter filed by the revision petitioner the second item of the suit schedule property was sold to one Moses.

9.Further, the revision petitioner has not taken the shares allotted as first item was sold to one Hitler and third item to one Thangam. Therefore, the mother of the respondents 1 & 2 have no rights over the properties. So, the impleading petition may be dismissed.

10.Admittedly, the mother of the respondents 1 & 2/third parties filed the suit in O.S.No.130 of 1989 for partition and also final decree petition. During the pendency of the suit she sold some properties, subsequently. The purchasers of the suit properties are not necessary parties. But the legal heirs of the deceased G.Sakunthala are necessary parties in pending litigation. After that only the Court below can decide what are the properties to be allotted to the shares of final decree petitioner.



11. Therefore, the I Additional District Munsif, Nagercoil, has rightly allowed the impleading petition. Therefore, the order, dated 17.12.2019 passed in I.A.No.1 of 2019 in I.A.No.423 of 1996 in O.S.No.130 of 1989 does not warrant any interference by this Court.

12. Finally, this Civil Revision Petition stands dismissed. The order, dated 17.12.2019 in I.A.No.1 of 2019 in I.A.No.423 of 1996 in O.S.No.130 of 1989 passed by the learned I Additional District Munsif, Nagercoil, is hereby confirmed. No Costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The I Additional District Munsif,
Nagercoil.

+1 CC to M/s.P.M.VISHNUVARTHANAN, Advocate (SR-29487[F] dated 17/09/2021)

C.R.P. (MD).No.304 of 2021
17.09.2021

ES (CO)

KB (24.09.2021) 3P 3C