



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:02.11.2021

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD)No.1693 of 2021

Muthumari

...Revision Petitioner/Plaintiff

Vs.

1.Marimuthu

2.Umarani

... Respondents/Defendants

PRAYER: Petition filed under Section 227 of Constitution of India, to direct the Sub Court, Manamadurai to number the plaint presented by the revision petitioner against the respondents in un-numbered O.S.No of 2021 (Filing No.OS/1885/2020) on the file of the Sub Court, Manamadurai.

For Petitioner : Mr.M.Gurudas

ORDER

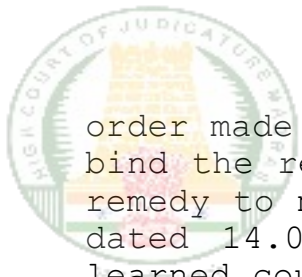
Heard the learned counsel appearing for the petitioner. Considering the nature of relief to be granted, notice to the respondents is dispensed with.

2. The revision petitioner herein namely Muthumari filed a suit on the file of the Sub Court, Manamadurai in December 2020. The plaint was returned 'un-numbered'.

3. The learned counsel for the plaintiff offered his explanation for the return made by the court below. Since the court below declined to number the suit, the present civil revision petition has been filed for directing the trial court to number the suit.

4. The learned counsel for the petitioner submitted that the suit property belonged to one Govindammal. The revision petitioner Muthumari and the first respondent Marimuthu are her children. The first respondent Marimuthu and Umarani are husband and wife. It is stated that Govindammal settled the suit property in favour of Muthumari by a registered settlement deed. Since Marimuthu was excluded from the settlement, Marimuthu and Umarani colluded with each other and enabled the second respondent to obtain residence order under Section 19 of the Protection of Women from Domestic Violence Act by filing D.V.O.P.No.2 of 2020 on the file of the Judicial Magistrate, Ilayangudi.

5. The petitioner in the revision petition even while seeking the relief of declaration and permanent injunction in respect of the suit property also included a prayer for declaring that the said



order made in Cr.M.P.No.667 of 2020 in D.V.O.P.No.2 of 2020 will not bind the revision petitioner. The petitioner is very much having a remedy to move the Sessions Court, if she is aggrieved by the order dated 14.09.2020. In any event, as rightly pointed out by the learned counsel for the petitioner, the Hon'ble Supreme Court in the decision reported in **2021 (1) SCC 414 (Satish Chander Ahuja Vs. Sneha Ahuja)** held that passing of an order by the judicial magistrate in proceedings under the Protection of Women from Domestic Violence Act will not create embargo against the maintainability of a civil suit. Therefore, if the suit filed by the revision petitioner is decreed, the petitioner can certainly wield it against the enforcement of the order dated 14.09.2020. If in the mean while the petitioner's right is sought to be interfered with, the remedy open to the petitioner is to challenge the same before the Sessions Court. It is for the petitioner to avail the same. At this stage, the learned counsel for the revision petitioner states that he will give up prayer No.C and confine himself prayer No.A and B. The said submission is recorded.

6. The petitioner is permitted to re-present the plaint after deleting the prayer No.C pertaining the order dated 14.09.2020. Thereupon, the Sub Court, Manamadurai shall number the suit within a period of seven days thereafter. This Civil Revision Petition is disposed of on these terms.

Sd/-

Assistant Registrar (AD-II)

// 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 Subordinate Judge
The Sub Court, Manamadurai.

+1 CC to M/s.M.GURUDAS, Advocate (SR-33826[F] dated 09/11/2021)

C.R.P. (MD)No.1693 of 2021
02.11.2021

SRK(CO)

BK/JC(11.11.2021) 2P 3C
<https://hcservices.ecourts.gov.in/hcservices/>



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