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C.R.P (PD) No.1267 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2022

CORAM: **JUSTICE N.SESHASAYEE**

C.R.P (PD) No.1267 of 2022

K.Rukmani

... Petitioner

Vs.

K.Padmanaban (died)

1.Rajalakshmi

2.Gayathir

3.Giridharan

4.Saranyan

5.Vijayakumar

6.Nalini @ Kala

7.Sasidharan

8.Sudhaman

9.Umachandran, Proprietor

Chandraeshwarar Granite & Ceramic Tiles

Shop No.1 & 2, No.131, Red Hills Road

S.V.Nagar, Chennai - 600 053

... Respondents

PRAYER: The Civil Revision Petition filed under Article 227 of the Constitution of India, to direct the learned II Additional District Judge, Poonamallee, to entertain and number the interlocutory application filed by the petitioner in IA Sr. No.942 of 2020 in OS No.37 of 2013 and dispose of the same in accordance with law.

For Petitioner : Mr.S.Ganesh

ORDER



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A suit for partition is said to have been withdrawn, without notice to the revision petitioner, who is one of the defendants in the suit. The revision petitioner submits that the suit was dismissed as settled out of court, whereas, he has not participated in any such alleged settlement process, and his share in the property continued to remain in tact and hence, he wants to move the trial court.

2. The revision petitioner submits that he has filed his written statement and has paid the court fee for passing a preliminary decree for his share and the court has ignored this aspect, when it dismissed the suit. Learned counsel submitted that it is in this circumstances, the restoration of the suit has become imminent for which he has taken out an application in IA Sr. No.942 of 2020 and it was returned and every time when he re-presents the same, the same is returned again and again.

3. There are two parts: (a) that in a suit for partition, every party to the suit can be treated as a plaintiff; and (b) the revision petitioner in the present case claims that he has paid court fee for his share along with the written statement.



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If it is true, the revision petitioner is entitled to have his share in the suit property declared, at least, there must be an element of enquiry needed.

Therefore, it is only appropriate that the trial court entertains the application on to its record, if there are no other infirmities in the application other than any issue as to its maintainability, and deal with that application, after hearing all the parties concerned therein.

4. The revision is accordingly disposed of. However, there is no order as to costs. The Registry is required to return the original of IA Sr. No.942 of 2020, which is enclosed by the revision petitioner along with revision, forthwith.

22.04.2022

Asr

To

The II Additional District Judge, Poonamallee



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N.SESHASAYEE, J.,

Asr

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