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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:17.11.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.No.3562 of 2022
and C.M.P.No.18915 of 2022

Muniswamy

...Petitioner

Versus

- 1.G.Y.Yellappa
- 2.Rathnamma
- 3.Narayanasamy
- 4.Akkaiaamma
- 5.Appaiah
- 6.Munirathna
- 7.Kantha
- 8.Nethra
- 9.Sunanda
- 10.Babjan
- 11.B.S.Wazeer
- 12.B.S.Dowlat Sherif
- 13.P.Rajendran
- 14.A.Veerabadra

(The respondents 3 to 4 are already set ex-parte before the trial Court, hence notice may be dispensed with in this present CMP)

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order passed in I.A.No.7 of 2022 in O.S.No.62 of 2019, dated 30.09.2022, on the file of the Additional District Judge, Hosur.

For Petitioner :Ms.R.S.Mattreya



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O R D E R

The Civil Revision Petition is filed challenging the order passed by the Court below allowing the petition for impleadment filed by the respondents 1 and 2.

2. The petitioner herein filed a suit for partition against the respondents 3 to 14, who are all the sharers. According to the plaint averment, the first respondent herein is the step brother of the petitioner, who is the son of the first wife of the petitioner's father. It was further averred in the plaint that the first respondent got separated from the family as early as on 31.01.1973. It was stated that on 31.01.1973, there was a family arrangement under which the first respondent got the share of 1.5 acres and relinquished the remaining properties. Therefore, the presence of the first respondent is not at all necessary for disposal of the present suit for partition, which is laid for partition of the remaining properties.

3. The respondents 1 and 2 filed application seeking impleadment in the suit in I.A.No.7 of 2022. In the affidavit filed in support



of the impleading application, it was clearly stated that the first respondent is the son of late Appaiah through his first wife and a registered sale agreement entered on 01.04.2008 with the second respondent by the first respondent and possession of the property also delivered to him. It was further stated that the present suit for partition filed by the petitioner collusively with and other respondents in their absence.

4. The admitted case of the petitioner is that the first respondent is the step brother of the revision petitioner. The revision petitioner claims that the first respondent divided from the family even in the year 1974. Whether the family arrangement relied by the revision petitioner is true and valid and whether the first respondent is entitled to claim any interest in the suit property etc are all questions to be decided in the main suit in the presence of first respondent.

5. In view of prayer for partition in the suit, the presence of first respondent is very much essential to decide controversies in the suit. As far as presence of second respondent is concerned as per the averments contained in the affidavit filed in impleading petition, the second respondent



entered into a registered agreement as early as on 2008 in respect of some of the properties and possession was also delivered to the second respondent.

In these circumstances, though the second respondent may be a necessary party in the suit, his presence would be very much essential at the time of final decree proceedings and also execution. Hence, I do not find any illegality or irregularity in the order passed by the Court below.

6. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/ No
Speaking Order / Non-Speaking Order
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To
The Additional District Judge,
Hosur.



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S.SOUNTHAR, J.

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