



C.R.P.No.3964 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.No.3964 of 2022

and

C.M.P.No.20645 of 2022

P.A.Sundararajan

... Petitioner

Vs.

1.S.Tharun Kishore

2.S.Mouri Dharshan

3.S.Sasikala

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, pleaded to set aside the order dated 28.10.2022 passed in I.A.No.3 of 2021 in O.S.No.41 of 2021 on the file of the Additional District Judge Court Namakkal.

For Petitioner : M/s.S.Kanniah

For Respondents : No Appearance



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ORDER

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This Civil Revision Petition is filed challenging the order passed by the Court below dismissing the petition filed by the petitioner/2nd defendant seeking rejection of the plaint.

2. The respondents herein filed a suit for partition against the petitioner and others in O.S.No.41 of 2021 for the relief of partition. The petitioner herein is the 2nd defendant in the suit.

3. The petitioner filed I.A.No.3 of 2021 seeking rejection of the plaint on the ground that earlier respondents filed a suit for partition in O.S.No.276 of 2011 and the same was dismissed for default on 26.11.2020. It is the case of the petitioner that without filing a petition to restore the earlier suit, it is not open to the respondent to file a separate suit for partition.

4. It is admitted case of the petitioner that the earlier suit for partition was dismissed for default and it was not dismissed on merits. Further right to partition is a continuing cause of action. Therefore, the dismissal of the earlier suit will not bar the respondent from filing a separate suit for partition. Therefore, the petitioner



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herein has not made out any ground to reject the plaint. Accordingly, this Civil

Revision Petition is dismissed by confirming the order passed by the Court below.

No costs. Consequently, connected miscellaneous petition is closed.

02.12.2022

Index: Yes/ No

Speaking Order / Non-Speaking Order

jai

To

The Additional District Court,
Namakkal



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S.SOUNTHAR, J.

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