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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.08.2023

CORAM :

**THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN**

C.R.P. No. 374 of 2023

and

C.M.P.No.3068 of 2023

Sathish

...Petitioner

.Vs.

1. Dr.S. Prithviraj

2. S. Tejaswini

...Respondents

**Prayer:** This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the Fair and Decreetal order dated 05.01.2023 passed in I.A.No.03 of 2021 in O.S.No.2216 of 2020 on the file of the VII Additional, City Civil Court, Chennai and pass orders.

For Petitioner : Mr.P. Ravi Shankar Rao

For Respondent : Mr. Vikram Ramakrishnan

**ORDER**

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This petition is filed to set aside the Fair and Decreetal order dated 05.01.2023 passed in I.A.No.03 of 2021 in O.S.No.2216 of 2020 on the file of the VII Additional, City Civil Court, Chennai.

2. The facts of the case is that the petitioner has filed a petition in I.A.No.03 of 2021 in O.S.No.2216 of 2020 under Order VII Rule 11 of C.P.C to reject the plaint in the suit in O.S.No.2216 of 2020 and the same was dismissed vide order dated 05.01.2023 . Hence this petition.

3. The learned counsel for the petitioner submitted that the first respondent has filed the suit and from the averments in the plaint, it is seen that the petitioner has not made out a prima facie case and his real intention is to harass the petitioner. He further submits that the suit is also liable to be rejected on the ground that a grandson cannot seek for partition of his grandfathers self acquired property. The above aspects has not been considered by the learned Judge, Court below and he has mechanically dismissed the I.A. filed by the petitioner. Hence he prays to allow this petition.



4. The learned counsel for the respondent submitted that the Court below has gone into each and every aspects in detail and passed the impugned order, which does not require interference by this Court. Hence he prays to dismiss this petition.

5. The learned counsel for the petitioner relied on the Judgment rendered by this Court in the case of ***S.A.No.273 of 2014, Govindan and Another Vs. Revathi and others*** reported in ***(2019) 8 MLG 600 LNIDN 2019 MAD 7232***, wherein it has been held that a property that is inherited by a Hindu on the death of his father after 1956 as a class I heir under Section 8, will not partake the character of co-parcenary property qua his children. Hence, he will be the absolute owner of the property and he have absolute power of alienation over the property and the plaintiff has no right over the property.

6. On a perusal of the impugned order, the learned Judge has made an observation that since the suit is filed for partition and permanent injunction the same could be decided only after a full fledged trial and only



then the controversy can be decided after evidence is adduced by both sides.

The petitioner herein to substantiate his case has to produce any material documents or oral evidence. The said finding of the learned Judge is perfectly valid in the eye of law and the same cannot be brushed aside easily. Hence, the impugned order does not warrant interference by this Court.

7. In view of the above, this Court is not inclined to interfere with the order passed in I.A.No.03 of 2021 in O.S.No.2216 of 2020 on the file of the VII Additional, City Civil Court, Chennai and the same is hereby confirmed. Accordingly, this Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

23.08.2023

smn

Index : Yes/No

Internet: Yes/No

To.

1. The VII Additional, City Civil Court, Chennai



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**V.BHAVANI SUBBAROYAN,J.**  
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