



C.R.P.No.2800 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2023

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

Civil Revision Petition No.2800 of 2017
and C.M.P.No.13268 of 2017

C.S.Vinayagam

... Petitioner

-Vs-

1.P.P.Sulochana (Died)

2.B.Sreedevi

3.B.Deepa

4.B.Udayakumar

(Respondents 2 to 4, LR's of the
deceased 1st respondent viz.,
P.P.Sulochana vide court order
dated 23.03.2022 in C.R.P.No.2800
of 2017 and C.M.P.No.13268 of 2017
by CVKJ)

5.V.S.Rajaram

Advocate Commissioner

... Respondents

Prayer : Civil Revision Petition under Section 115 of Civil Procedure Code against the fair and final order dated 24.11.2016 made in I.A.No.9460/2013 in I.A.No.9351 of 2012 in O.S.No.8398 of 2006 on the file of VII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.S.S.Mathivanan

For Respondents : Mr.Puhazh Gandhi - for RR 2 and 3
RR 4 and 5 - Notice served, No appearance



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ORDER

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A third party to the family wants to implead himself in a partition suit. A third party, unless and until purchases from any one of the members, is not entitled to implead himself either in the preliminary decree or in the final decree.

2. Mr.S.S.Mathivanan, learned counsel for the petitioner would submit that he is the owner of the property and the property does not belong to the joint family. Such a plea is alien to a partition suit. His remedy is to obstruct the decree when he is sought to be dispossessed, pursuant to the initiation of execution proceedings after the passing of the final decree. In other words, he is not a proper and necessary party to the suit. But, if he is sought to be dispossessed, he can always obstruct the decree under Order 21 Rule 97 of the Civil Procedure Code. At the stage of final decree, the Court cannot go into inter-se disputes of title. This is because, the Court sitting in final decree, is bound by the preliminary decree. Even in the preliminary decree proceedings, the person who sets up contra title against the ownership of the joint family is not a proper and necessary party.

3. However, the observation of the learned Judge that the petitioner herein should file a separate suit is running contrary to the Scheme under Order 21 Rule 97 to Order 21 Rule 103 of C.P.C, which says that the right, title and interest in the property will have to be dealt with at the time of obstruction under Order 21 Rule 97 and not by a separate suit.



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4. Therefore, reserving the right of the petitioner to obstruct the decree as and when it is put into execution against him and when an attempt is made to dispossess him, the Civil Revision Petition is dismissed, since he is not a proper and necessary party to the proceedings. No costs. Consequently, connected miscellaneous petition is also dismissed.

28.07.2023

Index : Yes/No

NCS : Yes/No

KST

To

VII Assistant Judge,
City Civil Court,
Chennai.



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V. LAKSHMINARAYANAN, J.
KST

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