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C.R.P.(PD)No.3921 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).No.3921 of 2019  
and CMP.No.25907 of 2019

Sakthivel @ Sundaramurthy

... Petitioner

VS

1.Kalairani

2.Murugayyan @ Lakshmanan

... Respondents

Petition filed under Article 227 of the Constitution of India against the Fair and Decretal Order dated 19.03.2019 passed in I.A.No.199 of 2018 in O.S.No.50 of 2013 on the file of the Principal District Munsif Court, Villupuram.

For Petitioner : Mr.K.Govi Ganesan

For Respondents : Mr.R.Sivakumar

### **ORDER**

The plaintiff and the first defendant are brothers. The plaintiff alleged that pending the suit the first defendant sold the property to the 2<sup>nd</sup> defendant. The suit which had been originally filed for partition of half share was amended to include a prayer for declaration that the plaintiff has a preferential right to acquire the share of the first defendant. This is not a suit for pre-emption under Section 32 of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955. By amending the prayer, the



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suit continues to be one for partition. If the plaintiff were to succeed in a

suit, it is always open to get a share by way of a proceeding under the

Partition Act, 1893 or at the time of final decree proceedings by way of an application under Section 151 of the Code of Civil Procedure.

2.By virtue of the fact, he seeks for a declaratory relief that he has a preferential right under the Hindu Succession Act, 1956, Transfer of Property Act, 1882 and Partition Act, 1893, the suit does not stop being a suit for partition and become one for pre-emption. The trial Court erred in treating it as a suit for pre-emption under Section 32 of the aforesaid Act.

3.A reading of the plaint leads me to the conclusion that it is a mere suit for partition with a consequential declaratory relief. The declaratory relief being incapable of valuation, he has valued it under Section 25(d) which is permissible under law. Only if he were succeed in the suit for partition, is he entitled for the consequential relief 'C'. For the purpose of court fee and valuation, a reading of the plaint alone matters. Therefore, the order treating a partition suit as a suit for pre-emption is set aside. The order in I.A.No.199 of 2018 in O.S.No.50 of 2013 dated 19.03.2019 is set aside.

4.Mr.K.Govi Ganesan, learned counsel appearing for the petitioner



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states that pending the Civil Revision Petition, as the order in I.A.No.199 of 2018 was not complied with, exercising the power under Order 7 Rule 11 of CPC, the plaint was rejected on 12.04.2023. Since the basis of the main order itself is removed by this order in this civil revision petition, the consequential order rejecting the plaint is set aside. The plaint is restored on the file of the learned Principal District Munsif, Villupuram. He shall proceed in accordance with law and dispose of the suit within a period of nine (9) months from the date of receipt of a copy of this order.

5.This civil revision petition is allowed with the above directions.

No costs. Consequently, connected miscellaneous petition is closed.

**14.08.2023**

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

vs

To

The Principal District Munsif Court,  
Villupuram.



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**V. LAKSHMINARAYANAN,J.**

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