



C.R.P.(MD)No.748 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD)No.748 of 2019

and

C.R.P.(MD)No.4472 of 2019

Lindsay Woolridge ... Petitioner / Petitioner/Plaintiff

Vs.

Eunice Woolridge (died)

Trevelyn Woolridge ... Respondents / Respondents/Defendants

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order, dated 11.03.2019, in I.A.No.532 of 2016, in O.S.No.68 of 2014, on the file of the VI Additional District Judge, Madurai.

For Petitioner : Mr.K.Sekar

For Respondent : Mr.V.Meenakshi Sundaram

ORDER

The instant Civil Revision Petition has been filed against the order, dated 11.03.2019, in I.A.No.532 of 2016, in O.S.No.68 of 2014, on the file of the VI Additional District Judge, Madurai.



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2.The revision petitioners herein is the petitioner /plaintiff and the respondents herein are the respondents /defendants before the Court below.

3. For the sake of convenience, the parties are referred to according to their litigative status before the Court below.

4. It appears that originally the plaintiff filed a suit for partition, seeking division of property and for allotment of 1/3rd share to the plaintiff. In the suit, the plaintiff added his mother as well as his brother as defendants.

5. It appears that a preliminary decree was passed on 20.01.2015 and after passing of preliminary decree the mother of the plaintiff, who was the first defendant, died. Hence, in the preliminary decree application, the plaintiff has altered the ratio of share and prayed for 1/2 share in the suit property.



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6. However, the contention of the plaintiff was objected by his brother, who was the second defendant in the suit and pleaded testamentary succession in respect of their mother's property, viz., undivided 1/3 share in the suit property. According to the defendants, his mother executed a registered Will, dated 02.02.2015 under Document No.18/2015, therefore, his mother's 1/3 share would devolve only upon the defendant, therefore, contended that the alternation of share is without any basis.

7. However, the Court below has believed the statement of the second defendant and granted the final decree, only in respect of 1/3 share to the plaintiff.

8. Aggrieved with the said order, the plaintiff has approached this Court by way of this Civil Revision Petition.

9. The learned counsel for the plaintiff would submit that the Court below has not taken into consideration of various suspicious circumstances and that he would submit that the very Will is the fabricated one.



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10. Before this Court embark into the submissions made by the learned counsel for the plaintiff, it has to be decided whether the Civil Revision Petition is maintainable against the final decree application. It is well settled principles of law that against the final decree proceedings appeal remedy is provided under Order 41 of C.P.C. It is pertinent to mention here that when an appeal remedy is provided, the Civil Revision is not maintainable.

11. In a Similar Circumstances, the learned Single Judge of this Court has held that against the final decree proceedings, appeal alone would maintainable, in the judgment reported in **2016-SCC-Online Mad-15782 (Prema V. Dr.Subramaniam)**. Even in an unreported judgment of this Court in **C.R.P.(MD)No.1427 of 2022 (K.Arunagirinathan V. R.Dakshinamurthi)**, dated 29.04.2022, the learned Single Judge has taken a similar view.



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12. Therefore, this Court is of the firm view that the very Revision is not maintainable. Hence, the instant Civil Revision Petition stands **dismissed**. There shall be no order as to cost.

13. However, the plaintiff / revision petitioner is given liberty to move an appeal before the appropriate Court within a period of four weeks from the date of receipt of copy of this order. In that event, the First Appellate Court, while calculating the period of limitation for filing Appeal, the period during which the Civil Revision Petition is pending may be excluded as per Section 14 of the Limitation Act. Consequently, connected Miscellaneous Petition is closed.

13.09.2023

NCC : Yes/No

Index :Yes/No

Ls

Note: The Office is required to return the original decree in challenge in this proceedings to the petitioner.



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C.KUMARAPPAN.,J.

Ls

To

- 1.The VI Additional District Judge,
Madurai.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

Order made in

C.R.P(MD)No.748 of 2019

13.09.2023