



C.R.P(MD)No.778 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

C.R.P(MD) No.778 of 2019
and
C.M.P(MD) No.4795 of 2019

A.Mathubala

...Petitioner

Vs.

A.Kalarani

...Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 15.03.2018 made in I.A.No.228 of 2018 in I.A.No.217 of 2016 in O.S.No.128 of 2012 on the file of the V Additional District Court, Madurai, and allow this Civil Revision Petition.



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For Petitioner : Mrs.M.D.Devi Saravana Priya
for Mr.PT.S.Narendravasan

For Respondent : No Appearance

ORDER

This Civil Revision Petition is filed against the order dated 15.03.2018 made in I.A.No.228 of 2018 in I.A.No.217 of 2016 in O.S.No.128 of 2012 on the file of the V Additional District Court, Madurai.

2. The Revision Petitioner is the fourth defendant and the respondent is the plaintiff in the suit in O.S.No.128 of 2012 on the file of the V Additional District Court, Madurai, filed for partition. Admittedly plaintiff and the defendants are brothers and sisters. I.A.No.217 of 2016 was filed by the plaintiff for passing final decree allotting her 1/7th share over the plaint schedule property



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as determined in the preliminary decree. In the said application, the petitioner filed Interlocutory Application in I.A.No.228 of 2018 under Order 3 Rule 1 and Order 9 Rule 12 and Section 151 of Code of Civil Procedure for dismissal of I.A.No.217 of 2016 praying to issue order for appearance of the plaintiff since she is missing from 10.09.2017. The said petition was dismissed by the learned V Additional District Judge, Madurai, by its order dated 15.03.2018. Aggrieved by the same, the present Civil Revision Petition is filed.

3. Heard Mrs.M.D.Devi Saravana Priya, learned counsel representing Mr.PT.S.Narendravasan learned counsel for the petitioner and perused the material available on record. In spite of service of notice, there is no representation on behalf of the respondent.

4. Basing on the material available on record and after consideration of the contention of the petitioner, the Court below dismissed the I.A.No.228 of 2018 holding that this petitioner is



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abuse of process of law and there is no merits and accordingly, it is dismissed as not maintainable. The Court below opined that even if a person is found missing the remedy available to the fourth defendant is to file appropriate petition before the police or to file a Writ of Habeas Corpus before the Hon'ble High Court.

5. Having heard the submissions of the learned counsel for the petitioner and upon careful perusal of the material available on record, this Court is fully agree with the opinion expressed by the Court below and in our considered view, there is no merit to interfere into the reasoned order passed by the trial Court and accordingly, the Civil Revision Petition is liable to be dismissed.

6. Accordingly, this Civil Revision Petition is dismissed.

7. No costs.



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8. Consequently, connected Civil Miscellaneous Petition

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is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No

RM

To

The V Additional District Judge,

V Additional District Court,

Madurai.



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BATTU DEVANAND, J.

RM

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