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C.R.P. (PD) . (MD) .Nos.1207 to 1209 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 16.06.2023	Pronounced on: 09.08.2023
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CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(PD).(MD).Nos.1207 to 1209 of 2022

and

C.M.P.(MD).Nos.4916, 4917 & 4920 of 2022

C.R.P.(PD).(MD).No.1207 of 2022:

1.K.Baskar

2.K.Ramesh Kumar

.. Petitioners

Vs.

1.P.A.Jannath Gani

P.A.Noorjahan (died)

2.P.S.Jamruth Begam

3.Hajirahn Beevi @ Rani

4.Ammer Beevi @ Nilafar

5.Shahul Hameed

6.Nihara

7.P.Rajendran

Sheik Dawood (died)

8.S.Magdood Kaja Moideen



C.R.P. (PD) . (MD) .Nos.1207 to 1209 of 2022

9.M.Farithabanu

10.S.Rahima Parveen

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 20.01.2022 passed in I.A.No.97 of 2020 in I.A.No.2 of 2005 in O.S.No.19 of 1996 on the file of the Additional Sub Court, Kumbakonam.

C.R.P.(PD).(MD).No.1208 of 2022:

N.Washington

.. Petitioner

Vs.

1.P.A.Jannath Gani

P.A.Noorjahan (died)

2.P.S.Jamruth Begam

3.Hajirahn Beevi @ Rani

4.Ammer Beevi @ Nilafor

5.Shahul Hameed

6.Nihara

7.P.Rajendran

Sheik Dawood (died)

8.S.Magdoom Kaja Moideen

9.M.Farithabanu



C.R.P. (PD) . (MD) .Nos.1207 to 1209 of 2022

10.S.Rahima Parveen

.. Respondents

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Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 20.01.2022 passed in I.A.No.32 of 2020 in I.A.No.2 of 2005 in O.S.No.19 of 1996 on the file of the Additional Sub Court, Kumbakonam.

C.R.P.(PD).(MD).No.1209 of 2022:

R.Ramaiyan

.. Petitioner

Vs.

1.P.A.Jannath Gani

P.A.Noorjahan (died)

2.P.S.Jamruth Begam

3.Hajirahn Beevi @ Rani

4.Ammer Beevi @ Nilafor

5.Shahul Hameed

6.Nihara

7.P.Rajendran

Sheik Dawood (died)

8.S.Magdoom Kaja Moideen

9.M.Farithabanu



10.S.Rahima Parveen

.. Respondents

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Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 20.01.2022 passed in I.A.No.98 of 2020 in I.A.No.2 of 2005 in O.S.No.19 of 1996 on the file of the Additional Sub Court, Kumbakonam.

(in all cases):

For Petitioner(s) : Mr.M.V.Santharaman

For R1 : Mr.M.Saravanan

COMMON ORDER

The petitioners herein are third parties to a partition suit between the respondents herein in O.S.No.19 of 1996 before the Additional Sub Court, Kumbakonam.

2.The issues involved in all these Civil Revision Petitions are inter-linked and hence, they are disposed of by this common order.

3.The petitioners are aggrieved by the impugned fair and decretal orders dated 20.01.2022 in the following Interlocutory Applications.



4.These Interlocutory Applications filed by the petitioners have been dismissed by three separate orders, all dated 20.01.2022. These Interlocutory Applications were filed for the following reliefs:

Sl. No	C.R.P.(MD).(PD). No.	I.A.No.	Order & Rule	Prayer sought for
1.	1207 of 2022	97 of 2020	Under Order I Rule 10 and Section 151 of C.P.C	To implead the petitioner / third parties in the final decree petition.
2.	1208 of 2022	32 of 2020	Under Order I Rule 10 and Section 151 of C.P.C	To implead the petitioner / third party in the final decree petition.
3.	1209 of 2022	98 of 2020	Under Order I Rule 10 and Section 151 of C.P.C	To implead the petitioner / third party in the final decree petition.

5.A preliminary decree was passed by the Additional Sub Court, Kumbakonam, in O.S.No.19 of 1996 on 08.07.2003. Aggrieved by the preliminary decree passed by the Additional Sub Court, Kumbakonam on 08.07.2003, A.S.No.336 of 2004 was filed by one of the aggrieved party. The parties to the suit in O.S.No.19 of 1996 entered into a compromise. A compromise decree was passed on 21.01.2014.

6.Based on the compromise decree, I.A.No.2 of 2005 was filed for passing of a final decree before the Additional Sub Court, Kumbakonam,



in O.S.No.19 of 1996. A final decree has also been since passed in O.S.No.19 of 1996 on 07.02.2022 after the impugned orders dated 20.01.2022 were passed.

7.The petitioners, who are third parties to the above proceedings, filed I.A.No.97 of 2020 in I.A.No.2 of 2005, I.A.No.32 of 2020 in I.A.No.2 of 2005 and I.A.No.98 of 2020 in I.A.No.2 of 2005 in O.S.No. 19 of 1996.

8.The case of the petitioners before this Court is that the suit for partition in O.S.No.19 of 1996 was based on the alleged sale deed dated 25.01.1958 executed in favour of one Ameena Beevi for an extent of 10 Acres and 19 Cents of land in S.No.165/1 (New R.S.No.165/1A).

9.It is submitted that although the parties to the suit and the appeal suit have a rights over of the land measuring an extent of only 10 Acres and 19 cents in S.No.165/1 (New R.S.No.165/1A), they have filed a suit to partition a larger extent of land measuring an extent of 11 Acres and 12 Cents [4.50 Ares together with 980 coconut trees etc.,] by including the adjacent land of the respective petitioners. Thus, the petitioners are entitled to be impleaded in I.A.No.2 of 2005 filed by the respondents for passing final decree in O.S.No.19 of 1996.



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10.It is submitted that under these applications filed to implead the petitioners in I.A.No.2 of 2005, which was filed under Order I Rule 10 of C.P.C., was wrongly dismissed by the learned Additional Sub Judge, Kumbakonam.

11.The learned counsel for the petitioners has also drawn the attention of this Court to the list of documents, which forms part of the respective impugned orders. It is submitted that despite the same, the learned Additional Sub Judge, Kumbakonam, has declined to allow the applications filed by the respective petitioners for impleading them in the final decree application in I.A.No.2 of 2005.

12.The learned counsel for the petitioners drawn the attention of this Court to the following decisions:-

(i) **Shreenath and another vs. Rajesh and others** reported in **AIR 1998 SC 1827**, wherein it has been held that a third party in possession of a property claiming independent right as a tenant not party to a decree for possession of immovable property under execution, could resist such decree by seeking adjudication of his objections under Order XXI Rule 97 of C.P.C.



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(ii) Harichand (Dead) through LRs. vs. Dharampal Singh Baba

and others reported in **2007 (5) CTC 170**, wherein it has been held that the family arrangement could be executed only if one has lawful right over the property covered by such arrangement and the suit based on alleged family settlement by one who had no such lawful rights cannot be sustained.

13.The learned counsel for the first respondent on the other hand submits that the question of impleading the parties in a final decree proceeding in a partition suit, does not arise, as the dispute is between the members of the family, who are claiming a share in the property. That apart, it is submitted that these petitioners are rank encroachers, who have been set up by others, who failed to get themselves impleaded earlier.

14.A reference is made to I.A.No.234 of 2016 filed by one P.K.Abdul Khadar, to implead himself. It is informed that the said application was dismissed, against which, C.R.P.(MD)No.1829 of 2019 filed by the said P.K.Abdul Khadar was dismissed on 29.10.2021.

Relevant portion of the said order reads as under:-



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"14. It is well settled that only that relative can be an heir of the deceased who is alive at the moment of the latter's death. A person who died before the deceased cannot be his heir and as such a pre-deceased son or a daughter gets excluded in view of the prior death. The theory of representation is not recognised under the Mohammed Law and the interest of each heir is separate and distinct. To put it in other way, unlike Hindu Law, estate of a deceased Mohamedan if he has died intestate, devolve on his heirs at the moment of his death. Under the Mohammedan Law, birthright is not recognised. The right of an heir apparent or presumptive comes into existence for the first time on the death of the ancestor, and he is not entitled until then to any interest in the property to which he would succeed as an heir if he survived the ancestor.

15. Considering the above and in the light of the Mohamedan Law above referred, the proposed party, who is the son of a predeceased son of Ammena Beevi or Dawood Ammal, who is the widow the deceased son of Ameena Beevi cannot claim any share in the property left behind by the said Ameena Beevi.

16. Viewing from any angle, the decision of the learned trial Judge in dismissing the impleading petition cannot be found fault with and consequently, this Court decides that the civil revision, which is devoid of merits, is liable to be dismissed."



It is therefore submitted that the said P.K.Abdul Khadar who is a disgruntled relative has set up the petitioners herein to derail the partition suit. Hence, it is submitted that there is no scope for interference with the impugned orders.

15.It is submitted that the question of impleading petitioner in the proceeding will arise only when the parties to the suit invoke the jurisdiction of the Execution Court for taking delivery of the property. It is submitted at that stage it is open for the petitioners to contest the proceedings by filing an appropriate application under Section 47 of C.P.C. It is therefore submitted that the Civil Revision Petitions are liable to be dismissed.

16.That apart, it is submitted that the impugned orders are well reasoned and require no interference.

17.The learned counsel for the first respondent has also drawn the attention of this Court to the reports of the Mediator appointed by this Court in the present Civil Revision Petitions. He also filed written submissions stating that the scope of final decree is to allot shares as per



the preliminary decree and the scope of the same cannot be enlarged by a third party, who are the petitioners in I.A.No.97 of 2020, I.A.No.32 of 2020 and in I.A.No.98 of 2020.

18.It is further submitted that the Court dealing with the final decree application cannot go beyond the preliminary decree. The impleading petitioners can file an obstruction application under Order XXI Rule 97 of CPC at the time of delivery of the Executing Court. But, the petitioners herein have file I.A.No.97 of 2020, I.A.No.32 of 2020 and I.A.No.98 of 2020 for impleading, which is not maintainable. The petitioners who are setting up rival title miserable failed to prove their right over the subject property and prayed for dismissal of all the CRPs. In support of his contention, the learned counsel relied on the following decisions:

- (i)***P.K.Abdul Khadar Vs. P.A.Jannath Ganni and others***, [2022 (1) MWN (Civil) 154] and
- (ii)***Malar Vs. Govindasamy and other***, [C.R.P.No.626 of 2018].

19.I have considered the arguments advanced by the learned counsel for the petitioners and respondents.



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20.The petitioners are third parties to the partition suit between the plaintiffs and defendants in O.S.No.19 of 1996. If it is the case of the petitioners that the lands of the petitioners have been wrongly included in the schedule to the partition suit in O.S.No.19 of 1996, it is always open for the petitioners to resist the execution of the decree by filing suitable application under Order 21 Rule 97 read with Section 47 of CPC, as and when respondents viz., the plaintiff attempt to take delivery of the property from the petitioners. Impugned order does not suffer from any error.

21.Therefore, there is no merits in the present Civil Revision Petitions. The present Civil Revision Petitions are therefore liable to be dismissed and accordingly dismissed with the above liberty. Consequently, the connected Miscellaneous Petitions are closed. No costs.

09.08.2023

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Index : Yes / No

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To

The Additional Subordinate Judge,
Additional Sub Court,
Kumbakonam.



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C.SARAVANAN, J.

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