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C.R.P(MD)No.2439



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.06.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.2439 of 2022
and
C.M.P.(MD)No.11786 of 2022

Malathi

...Petitioner

Vs.

1.Duraiyarasan

2.S.M.Raja

3.S.M.Elango

4.S.M.Palanivel

5.S.M.Neelakandan

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records relating to the order and decretal order dated 10.10.2022 in I.A.No.321 of 2022 in O.S.No.315 of 2019 on the file of the learned Subordinate Judge, Pattukkottai.

For Petitioner : Mr.A.Sivasubramanian
For 1st Respondent : Mr.N.Balakrishnan
For Respondents 2 to 5 : No Appearance

ORDER

This Civil Revision Petition has been filed by the petitioner to set aside the order passed in I.A.No.321 of 2022 in O.S.No.315 of 2019 dated 10.10.2022, on the file of the learned Subordinate Judge, Pattukkottai.



2.The petitioner is the third party in O.S.No.315 of 2019 filed by the first respondent against the respondents 2 to 5, who are defendants 1 to 4 in the suit.

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3.The case of the petitioner is that in the suit that has been filed by the first respondent against the respondents 2 to 5, the relief sought for are declaration and mandatory injunction. It is submitted that the respondents 2 to 5 herein are the brothers of the petitioner, who has sold the property without obtaining consent of the petitioner and behind the back of the petitioner. Thus, the petitioner is entitled to be impleaded. The impugned order is liable to be interfered with.

4.Per contra the learned counsel appearing for the first respondent submits that the impugned order is well reasoned and requires no interference. It is submitted that all the points were considered and therefore, the impugned order does not call for any interference.

5.I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the first respondent.

6.The petitioner may have a right over the property sold by the respondents 2 to 5 to the 1st respondent. Whether the petitioner indeed has the right over the property or not can be decided only if the petitioner is impleaded. Therefore, dismissal of the application to implead the petitioner as a party in the above suit



cannot be sustained.

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7. Therefore, the impugned order rejecting the application filed by the petitioner under Order 1 Rule 10 of CPC is liable to be interfered. The impugned order is therefore, set aside. Consequently, I.A.No.321 of 2022 stands allowed.

8. In the light of above, the plaint in O.S.No.315 of 2019 stands amended. Appropriate steps are directed to be taken by the parties to amend the pleadings. The petitioner shall file a written statement if any within a period of 30 days from the date of receipt of a copy of this order. The trial Court thereafter, shall proceed to frame additional issues and complete the trial and dispose O.S.No.315 of 2019 as expeditiously as possible preferably within a period of 12 months thereafter.

9. Accordingly, this Civil Revision Petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

22.06.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

Mrn

To

1. The Sub Judge, Pattukkottai.

2. The Section Officer

Vernacular Section,

Madurai Bench of Madras High Court,

Madurai

<https://www.mhc.madurai.judiciary.gov.in/>



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C.SARAVANAN,J.

Mrn

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