



C.R.P(MD).No.32 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD).No.32 of 2023

and

CMP(MD)No.196 of 2023

S.Mallika

... Petitioner/1st Respondent/
1st Defendant

Vs.

1.T,Dhanalakshmi

... 1st Respondent/Petitioner/Plaintiff

S.Pownammal (Died)

2.V.Tamilselvi

3.The Idol of Arulmighu Subramania Swamy Thirukoil,
Rep by its Executive Officer,
Having Office at
Sri Subramania Swamy Thirukkoil,
Kumaravayalur-620 102,
Srirangam Taluk.

4.Vijaya

5.Kala

6.Kannan

... Respondents2-6/Respondents 3-7/

Defendants 3 - 7

PRAYER:- This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside order dated 29.09.2022 in E.P.No.573 of 2019 in O.S.No.198 of 2008 on the file of the III Additional District



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Judge, Tiruchirappalli, and allow the present Civil Revision Petition.

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For petitioner : Mr.P.Vinoth

ORDER

This petition has been filed to set aside the order dated 29.09.2022 in E.P.No.573 of 2019 in O.S.No.198 of 2008 on the file of the III Additional District Judge, Tiruchirappalli.

2.The petitioner is the first defendant in the aforesaid suit which came to be decreed on 14.10.2011. In pursuant to the judgment and decree of the Trial Court, the first respondent herein filed E.P.No.573 of 2019 under Order XXI Rule 11 of CPC for delivery of the suit property.

3.Before the lower Court, it was contended by the petitioner that the property in question was a joint property belonging to the petitioner and the temple and that without the proper partition of the property, delivery cannot be ordered.

4.The Trial Court after examination come to the conclusion that in the absence of an appeal against the judgment and decree of the Trial Court dated



14.10.2011, the prayer of the petitioner before the lower Court cannot be accepted. Accordingly, the lower Court has allowed the delivery of the suit schedule property to the respondent herein in support of the plea.

5.The learned counsel for the petitioner has placed the reliance of the following decision of the Hon'ble Supreme Court in **Gajara Vishnu Gosavi Vs Prakash Nanasaheb Kamble and Others** reported in (2009) 10 SCC 654. para 12 of the said order reads as under:-

“12.There is another aspect of the matter. An agricultural land belonging to the co-parceners/co-sharers may be in their joint possession. The sale of undivided share by one co-share may be unlawful/illegal as various statutes put an embargo on fragmentation of holdings below the prescribed extent.”

6.The learned counsel for the petitioner also drawn attention to the order of this Court dated 03.03.2023, in CMP(MD)No.2717 of 2023 in CMA(MD)No.232 of 2023, which was arising out of the same impugned order passed by the III Additional District Judge, Tiruchirappalli, wherein stay has been granted.



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7.The petitioner cannot maintain this Civil Revision Petition.

Particularly, in the light of the fact that the suit was decreed as earlier as dated 14.10.2011. That apart, the temple has independently initiated the proceedings against the impugned order passed by this Court in CMA(MD)No.232 of 2023. If at all it is for the temple to object the delivery and not the petitioner who had agreed to sell the land to the first respondent/plaintiff herein.

8.Therefore, the Civil Revision Petition is dismissed of. No costs.
Consequently, the connected miscellaneous petition is closed.

09.03.2023

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

To

- 1.The III Additional District Judge,
Tiruchirappalli.
- 2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

dss

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