



CMP(MD). No.420 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction

Friday, the Ninth day of June Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice M.S.RAMESH
AND
The Hon`ble Mr.Justice N.ANAND VENKATESH

CMP(MD). No.420 of 2023
IN
AS(MD) NO 65 of 2014

Saraswathy

... Petitioner/ 3rd Respondent

Vs

1 C.Gurusamy

2 G.Sreenivasan

3 G.Santhi

4 Saroja

5 Nagajothi

6 Ragunathan

7 Shanmugam

8 Ganesan

9 Vasanthakumar (Exonerated)

<https://www.mhc.tn.gov.in/judis>



CMP(MD). No.420 of 2023

10 Veeraiah
(Died)

11 M.Selvakumar

12 T.S.Saravanan

13 M.Pasumpon

14 N.Mathivathani

15 N.Meenapreethy

16 N.Kaviya Sangamithra

17 V.Kalavathi

18 V.Senthilkumar

19 V.Premkumar

20 V.Ranjithkumar

21 Rekha

... 11 to 21 Respondent/ Respondent 8 to 18

Prayer in cmp(md)no:420 of 2023 :-

This Civil Miscellaneous Petition filed under order 41 Rule 21 of CPC, To re-hear the above A.S.(MD).No.65/2014 dated 10-11-2022 on the file of this Hon`ble Court and pass such other orders as this Hon`le Court may deem fit and proper in the circumstances of the case and thus render justice.



CMP(MD). No.420 of 2023

Prayer in AS(md)no:65 of 2014

This Grounds of First Appeal filed under section 96 of CPC to set aside the Judgement and Decree dated 04/02/2014 passed in O.S.NO 551 OF 2004 on the file of the Additional District Court No 6 Madurai by allowing this Appeal

ORDER:- This Revision/Appeal Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Ms. C.Jaganathan, Advocate for the petitioner and Mr.D.Nallathambi Advocate for the 1 to 4 th respondent(s), this Court made the following order:

[Order of the Court was made by M.S.RAMESH, J.]

The petitioner herein, who was the third respondent in the appeal in A.S. (MD) No.65 of 2014 and the third defendant in the suit in O.S. No.551 of 2004 has preferred the present application under Order 41 Rule 21 of the Civil Procedure Code seeking for rehearing of the above Appeal that came to be allowed by us on 10.11.2022.

2. The reason assigned by the petitioner for the non appearance of his counsel before the Court on the date of its final disposal was that her original counsel namely, M.Ravishankar had expired during the pendency of the appeal and that she was not aware of his death. Accepting the reason assigned by her, we heard the learned counsel for the petitioner.

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CMP(MD). No.420 of 2023

3. The learned counsel for the petitioner denied the adoption of the first defendant, as well as the plaintiff, which aspect was not brought to our notice during the hearing of the Appeal Suit. It is his further submission that the Will executed by Late Kannayiram Pillai in favour of the first defendant is a 'bogus Will'.

4. We had predominantly dealt with the grounds raised by the petitioner in our earlier judgment dated 10.11.2022. While allowing the appeal and dismissing the suit filed by the fifth respondent / plaintiff, we had found that the judgment of the trial Court in ordering for partition of the suit property when the plaintiff had admitted that the first defendant to be the adopted son of Late Kannayiram Pillai in her pleadings, as well as in the oral evidence. We had also pointed out that the trial Court ought not to have ordered for partition after rendering a finding that the plaintiff was not the adopted daughter of Late Kannayiram Pillai. When the plaintiff is not the adopted daughter and is not among the Class-I or Class-II legal heirs nor agnate or cognate, the judgment and decree of partition in favour of the plaintiff, is legally unsustainable.

5. This apart, we have also questioned the legality of the trial Court's proceedings in having framed the issues with regard to the validity of adoption of the first defendant when the plaintiff had herself admitted that the first defendant was the adopted son of Late Kannayiram Pillai, both in her pleadings, as well as in the oral evidence. These findings rendered by us in the judgment dated 10.11.2022, have not been questioned by the petitioner in the present Civil Miscellaneous Petition, nor was canvassed by the petitioner's counsel.

6. Thus, we find no reason to retract or review the original judgment passed by us

<https://www.jhcn.gov.in/judis> In A.S. (MD) No.65 of 2014 dated 10.11.2022. Accordingly, the present Civil



CMP(MD). No.420 of 2023

Miscellaneous Petition stands dismissed and the original judgment in A.S. (MD) No.65 of 2014 dated 10.11.2022 stands affirmed.

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Sd/-

Assistant Registrar (CS III)

// True Copy //

/08/2023

Sub Assistant Registrar(CS)

DP

TO

THE VI ADDITIONAL DISTRICT JUDGE, MADURAI.

BEFORE THE MADURAI BENCH OF
MADRAS HIGH COURT

Hon`ble Mr.Justice

M.S.RAMESH

AND

Hon`ble Mr.Justice

N.ANAND VENKATESH

ORDER DATED : 09/06/2023

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ORDER

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CMP(MD). No.420 of 2023

in

AS.(MD)No.65 of 2014

Giving direction and etc.
as stated within.

KSR/24.08.2023 5P 2C

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