



C.R.P.No.2512 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.2512 of 2024

Dr.Nirmala

.. Petitioner

Vs.

1. V.Krishnakumar
2. S.Vadivel
3. S.Kalyanasamy
4. Subash Seghal
5. A.Rajan

.. Respondents

Prayer: Petition filed under Article 227 of the Indian Constitution, against the order of notice in I.A.No.1 of 2023 in O.S.No.64 of 2011 dated 21.12.2023 on the file of the 1st Additional District Judge, Coimbatore.

For Petitioner : Mr.G.Vikash Anand

ORDER

This civil revision petition is filed against the order of issuing notice by the I Additional District Judge, Coimbatore, in I.A.No.1 of 2023 in O.S.No.64 of 2011.



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2. O.S.No.64 of 2011 is a suit filed for declaration of title and for injunction by the civil revision petitioner. The suit came to be decreed, not granting in entirety the relief that was sought by the plaintiff. In and by way of the judgment dated 28.04.2016, the learned I Additional District Judge, Coimbatore granted a decree for partition, giving half share to the plaintiff and half share to the defendants.

3. The said decree was challenged by the plaintiff before this Court in A.S.No.525 of 2016. The said appeal was dismissed on 06.06.2022, confirming the judgment and decree of the Court below. Challenging the judgment and decree of the first Appellate Court, a Special Leave Petition was preferred before the Supreme Court of India in S.L.P.(Civil)No.21975 of 2022. The said Special Leave Petition was dismissed on 14.12.2022. In other words, the grant of preliminary decree by the learned I Additional District Judge, Coimbatore, has attained finality.

4. The defendants alienated the property in favour of respondents 1 to 3 herein. Respondents 1 to 3 before me are *lis*



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pendens purchasers. The alienation is by way of a registered sale deed. As the plaintiff did not take any steps after passing of the preliminary decree, the purchasers took out an application in I.A.No.1 of 2023 seeking for passing of a final decree by appointment of an Advocate Commissioner to divide the suit property in terms of the preliminary decree. The learned I Additional District Judge has ordered notice in the said application on 21.02.2024. Challenging the same, the present civil revision petition has been filed at the instance of the plaintiff.

5. At the outset, I have to point out that an order of issuing "notice" is not an order within the meaning of Section 2(14) of the Code of Civil Procedure, 1908. In order to revise an order, either under Article 227 of the Constitution of India or under Section 115 of the Civil Procedure Code, 1908, it requires an order *"to be passed by the Court, which fully adjudicates the rights and liabilities of the parties"*. All that the learned I Additional District Judge has done in the present case is issuance of notice. Whatever may be the objections of the civil revision petitioner, that could be stated before the I Additional District Judge by way of a counter. I am sure, if such objections are



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filed, the I Additional District Judge will apply his mind to the case and pass appropriate orders. Without filing a counter and without an order being passed by the I Additional District Judge, the question of maintaining a revision does not arise. I have no reason to interfere with the order, the order being issuance of notice.

6. The civil revision petition is dismissed. There shall be no order as to costs. Consequently, C.M.P.No.13174 of 2024 is closed.

18.07.2024

Neutral Citation : Yes/No

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V.LAKSHMINARAYANAN, J.

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