



C.R.P.(MD)No.480 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 04.09.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.480 of 2024

and

C.M.P.(MD)No.2407 of 2024

S.Varasai Mohamed

... Petitioner/6th Defendant

Vs.

1.S.Samsutheen Kani

Sulaiman (Died)

2.Pattani Ibrahim

Kani @ Sameskani (Died)

3.Nalla Mohamed

4.Allapitchai

5.Nalla Mohamed

6.Shajahan

7.Mydeen

Jhaheer (Died)

8.Haina Mohamed

9.Mydeen

... Respondents/Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow this Civil Revision Petition setting aside the order dated 10.10.2023 made in I.A. No.273 of 2022 in Probate O.P.No.220 of 2021 on file of 1st Additional District Court, Madurai.



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For Petitioner : Mr.C.R.Janarthanan

For Respondents : Mr.C.Nihil Nandha for R1 to R3 & R6 to R8
No appearance for R4

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ORDER

The petitioner herein filed Probate O.P.No.220 of 2021 on the file of the I Additional District Court, Madurai. It appears that some of the persons shown as respondents were already dead at the time of institution of the Probate O.P. The petitioner wants to withdraw the said Probate O.P. with liberty to file a fresh petition on the same cause of action. The Court below vide order dated 10.10.2023 dismissed I.A.No.273 of 2022 filed under Order XXIII Rule 1 of Civil Procedure Code. Questioning the same, the present civil revision petition came to be filed.

2.The learned counsel for the contesting respondents strongly submitted that the impugned order is well reasoned and that it does not warrant interference. He also pointed out that the testator had executed a subsequent Will and that it has been conveniently suppressed. He called upon this Court to dismiss the civil revision petition.



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3.I carefully considered the rival contentions and went through the materials on record. Filing Probate O.P. against dead persons is clearly a formal defect within Order XXIII Rule 1 of Civil Procedure Code.

4.In this view of the matter, the impugned order is set aside. The petitioner is given liberty to file a fresh Probate O.P. on the same cause of action. The learned counsel for the petitioner states that the petitioner will file fresh Probate O.P. within a period of fifteen days from the date of receipt of a copy of this order. It shall be numbered immediately. It shall be listed before the I Additional District Judge, Madurai to be tried along with Probate O.P.No.150 of 2020 filed by the contesting respondents herein.

5.The civil revision petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

04.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

The I Additional District Court,
Madurai.



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G.R.SWAMINATHAN, J.

ias

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