



C.R.P.(PD)(MD) No.847 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.03.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P.(PD)(MD) No.847 of 2020

and

C.M.P.(MD) No.5671 of 2020

K.Shaji Kumar

... Petitioner/4th Defendant

Vs.

1.Jessi

2.Iden Sony

... Respondents 1 & 2/Plaintiffs

3.Simin Sony

4.Malto Sony

... Respondents 3 & 4/
Defendants 1 & 2

5.K.Valsala

6.K.Kiji Kumar

7.K.Sheelakumari

8.Sukumaran

9.Rajan

10.Karmegham Asari

11.C.S.I.Pastorate Church,
Nadikkavu, Rep., by Paster,



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Methukummal Village,
Killiyoor Taluk,
Kanyakumari District.

... Respondents 5 to 11/
Defendants 3 and 5 to 10

[Since no relief is claimed against the respondents
3 to 11, the respondents are hereby given up]

Prayer: Petition filed under Article 227 of the Constitution of India to strike
off the plaint in O.S.No.104 of 2020 on the file of the Court of the
Subordinate Judge, Kuzhithurai.

For Petitioner	:	Ms.N.Krishnaveni Senior Counsel assisted by Mr.P.Thiyagarajan
For RR1 to 4	:	Mr.S.C.Herold Singh
RR5 to 11	:	Given up (<i>vide</i> EB)

ORDER

This Civil Revision Petition is filed under Article 227 of the
Constitution off India to strike off the suit in O.S.No.104 of 2020 on the file
of the Court of the Subordinate Judge, Kuzhithurai.

2. The petitioner herein is the 4th defendant in the said suit. The
said suit in O.S.No.104 of 2020 is filed seeking partition and separate



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possession of 13.889 cents, out of the total extent of 1 acre 40 cents, situated in S.Nos.5677, 565/4A and 565/4B of Methukummal Village, Killiyoor Taluk, Kanyakumari District, by tracing title under a registered sale deed dated 26.10.1992 executed in favour of the husband of Respondent No.1 and father of Respondent No.2/plaintiffs viz., Lawrance

3. The present Civil Revision Petition is filed by the 4th defendant contending that the claim made by the husband of Respondent No.1 and father of Respondent No.2/plaintiffs, basing upon the very same registered sale deed dated 26.10.1992, was already negatived in a previous litigation initiated by the father of the petitioner herein in O.S.No.140 of 1995 on the file of the Court of the Principal District Munsif, Padmanabhapuram and it was held that the said sale deed does not confer any title on the husband of Respondent No.1 and father of Respondent No.2/plaintiffs over the property, which was the subject matter of O.S.No.140 of 1995. It is further contended that the said suit in O.S.No.140 of 1995 was decreed declaring the title of the father of the petitioner herein and another, which was confirmed by the I-Additional Subordinate Court, Camp at Padmanabhapuram and this Court in



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S.A.No.88 of 2003. Thus, it is contended that once the very same sale deed was relied upon by the husband of Respondent No.1 and father of Respondent No.2/plaintiffs and his claim was negated in O.S.No.140 of 1995. Therefore, the plaintiffs in the present suit are not entitled to agitate their claim once again, placing reliance on the very same document, as their claim is only through the said Lawrance.

4. On the other hand, learned counsel appearing for Respondents No.1 and 2/plaintiffs contended that the said Lawrance has purchased an undivided share of 25 cents of the total extent of 1 acre 40 cents and the present suit is filed for partition and the title of the said Lawrance was considered *vis-a-vis* the suit property in O.S.No.140 of 1995 in the previous litigation. But the validity of the sale deed dated 26.10.1992 was not the subject matter of the said suit. Therefore, the claim of the plaintiffs in the present suit for partition and separate possession of the property covered by sale deed dated 26.10.1992 cannot be said to be the subject matter of the previous round of litigation in O.S.No.140 of 1995.



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5. This Court has considered the submissions made on either side carefully and perused the material on record.

6. It is not in dispute that the claim of the father of the petitioner herein for declaration of title in respect of B-Schedule property in O.S.No. 140 of 1995 has become final as against the said Lawrance through whom the plaintiffs are claiming and the plaintiffs in the present suit also came on record in the said litigation, when the matter came up before this Court at the second appellate stage. Therefore, whatever declaration that was made in O.S.No.140 of 1995, as confirmed by this Court in S.A.No.88 of 2003, cannot be disturbed, nor Respondents No.1 and 2/plaintiffs are entitled to make any claim over the property, which is the subject matter of O.S.No.140 of 1995 contrary to the decree in the said suit.

7. As contended by the learned counsel for Respondents No.1 and 2/plaintiffs, they are also not making any claim contrary to the decree passed in O.S.No.140 of 1995 and their claim is only to earmark their undivided share of property by metes and bounds and deliver separate possession from



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out of the total extent of 1 acre 40 cents. Taking into consideration the fact that B-Schedule property in O.S.No.140 of 1995 is also stated to be out of a total extent of 77½ cents, this Court is of the view that the suit filed by Respondents No.1 and 2/plaintiffs cannot be thrown out at this stage. However, it is made clear that under no circumstances, Respondents No.1 and 2/plaintiffs can make any claim contrary to the decree passed in O.S.No.140 of 1995, as the same has admittedly attained finality and the same is binding on Respondents No.1 and 2/plaintiffs.

8. Subject to the above observations, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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

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To

The Subordinate Judge,
Kuzhithurai.



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MUMMINENI SUDHEER KUMAR, J.

ABR

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