



C.R.P.(MD)No.1548 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 07.08.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.1548 of 2024

1.Rethinam

2.Minor Aswini

3.Minor.Aslin

... Petitioners/Respondents 1 to 3/
Decree Holder/Plaintiffs

*(Petitioners 2 and 3 are represented by the
1st petitioner / Rethinam)*

Vs.

1.Minor Ashiya

*(First respondent is represented by the
2nd respondent / Usha)*

2.Usha

... Respondents 1 and 2/Claim Petitioners/
Respondents 2 and 3

3.Alban Raj

... 3rd Respondent/4th Respondent/
Judgment Debtor/Defendant

Prayer: Writ petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 10.04.2024 passed in E.A.No.2 of 2020 in E.P.No.22 of 2019 in O.S.No.12 of 2016 on the file of Principal District Munsif, Padmanabhapuram.

For Petitioners : Mr.A.Prabhu Selva Kumar

For Respondents : Mr.S.C.Herold Singh

* * *



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ORDER

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Heard both sides.

2.The first petitioner is none other than the mother of the third respondent herein. The petitioners 2 and 3 are the granddaughter of the first petitioner born through Thangam. Thangam is no more. The third respondent after the demise of Thangam married the second respondent herein and through the said wedlock, the first respondent was born. The grandchildren born through the first wife are with the first petitioner. O.S.No.12 of 2016 was filed and maintenance decree was passed. In the said suit, the petition mentioned property was also attached on 19.07.2016. The suit was filed on 19.01.2016. In the intervening period, the third respondent herein had settled the said property in favour of the respondents 1 and 2 on 15.02.2016. To enforce the decree, execution petition was filed on 06.06.2019. In the said execution petition, the respondents 1 and 2 herein filed E.A.No.2 of 2020 putting forth their claim. E.A. was allowed on 10.04.2024. Questioning the same, this civil revision petition came to be filed.

3.Even though I found the contentions advanced by the learned counsel for the revision petitioners to be highly persuasive, I am not in a position to



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grant relief for the reasons that the revision petitioners ought to have filed an appeal. Admittedly, the respondents 1 and 2 herein filed their claim petition under Order XXI Rule 58 of the Civil Procedure Code. The claim was allowed. Order XXI Rule 58(4) reads that where any claim or objection has been adjudicated upon under this Rule, the Order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it was a decree.

4.The petitioner should therefore file only a first appeal questioning the impugned order which has the force of a decree. My attention is also drawn to the order dated 03.08.2010 passed in C.R.P.(NPD)(MD)No.523 of 2010 in which it was held that civil revision petition filed against Order XXI Rule 58 of Civil Procedure Code is not maintainable. In this view of the matter, this civil revision petition is dismissed as not maintainable.

5.Even though, this civil revision petition has been dismissed as not maintainable, I direct the Registry to return the certified copies of fair and decretal order dated 10.04.224 made in E.A.No.2 of 2020 in E.P.No.22 of 2019 in O.S.No.12 of 2016 on the file of Principal District Munsif, Padmanabhapuram to the learned counsel for the revision petitioners. The



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learned counsel for the revision petitioners states that first appeal will be filed before the first appellate Court within a period of seven days from the date of receipt of a copy of this order. If such an appeal is filed, it shall be entertained without reference to limitation and it shall also be disposed of within a period of three months thereafter. No costs.

07.08.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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Issue order copy on 08.08.2024.

To:

The Principal District Munsif,
Padmanabhapuram.



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G.R.SWAMINATHAN, J.

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