



C.R.P. (MD) No. 1769 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.08.2024

CORAM

**THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY**

C.R.P. (MD) No. 1769 of 2024  
and  
C.M.P (MD) No.10113 of 2024

C.Raviraj

... Petitioner/

1<sup>st</sup> Defendant

-VS-

1.Sumathy

... 1<sup>st</sup> Respondent/  
Plaintiff

2.The District Collector  
Kanyakumari District  
at Nagercoil.

... 2<sup>nd</sup> Respondent/  
2<sup>nd</sup> Defendant

PRAYER: Civil Revision Petition filed under Article 225 of the Constitution of India, to allow this Civil Revision Petition and call for the records relating to the impugned fair and decreetal order passed by the learned Principal District Munsif, Nagercoil, dated 02.01.2024 in I.A.No.492 of 2018 in O.S.No.63 of 2018 and set aside the same and allow the said application.

For Petitioner : Mr.N.Dilip Kumar

For Respondents : Mr.S.Rajasekar for R1



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## ORDER

The Civil Revision Petition is filed against the order dated 02.01.2024 in I.A.No.492 of 2018 in O.S.No.63 of 2018.

2. The said O.S.No.63 of 2018 is filed by the first respondent herein stating that originally the property belongs to her father-in-law and pursuant to an oral partition, the suit 'A' schedule property came to the share of her husband and her husband has conveyed the property to her.

3. It is her further claim that the suit 'B' schedule property was left as a common pathway in respect of ingress and egress to the suit 'A' schedule property. Therefore, the defendants are interfering with the said right and therefore, the suit is filed for a declaration that the plaintiffs right of easement over 'B' schedule property for the free ingress and egress to 'A' schedule property from 'C' schedule property and vice versa and for consequential permanent injunction. The first defendant in the suit filed an application to reject the plaint. The same was dismissed by the Trial Court, as against which, the present Revision Petition is filed.



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4. Mr. N.Dilip Kumar, the learned Counsel for the petitioner by taking this Court through the settlement deed would submit that the recitals of the settlement deed is in the nature of a Will. When the plaintiff admittedly claims title only through the said document and by the said document no title has been passed in favour of the plaintiff, then the suit is not maintainable. This apart, there is also a connected suit for partition which is pending between the parties and the plaintiff does not even whisper anything about the said suit in the plaint. Therefore, the suit is also bad for suppression of material facts.

5. I have considered the said submissions made by the learned Counsel for the petitioner and perused the material records of the case.

6. Even though, ultimately it is for the Trial Court to construe the document dated 03.11.2006, on a bare perusal of the said document, *prima facie* it conveys the title to the wife with life estate being reserved to the husband. In that view of the matter, I am unable to accept the contention that is in the nature of a Will. Secondly, as far as the contention regarding suppression of material facts is concerned, the same can also be appropriately raised before the Trial Court in the written statement as the Court has to determine whether the fact is material or not and then decide the question while dealing with the facts in toto.



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7. In view thereof, I am of the view that the defendant can raise the said defenses in the main suit and this is not a case where the plaintiff should be shunted out at threshold by allowing the application for rejection of plaint. Therefore, giving liberty to the petitioner to raise all the grounds in the written statement to be considered by the Court during the course of the trial, the Civil Revision Petition is disposed of. Consequently, the connected Miscellaneous Petition is closed. No costs.

**01.08.2024**

NCC : Yes/No  
PKN



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To



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1. The Principal District Munsif Court, Nagercoil.



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**D.BHARATHA CHAKRAVARTHY, J.**

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