



C.R.P.(MD)No.1934 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 23.09.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.1934 of 2024

and

C.M.P.(MD)No.11027 of 2024

M.Vimala Mary (Died)

1.Joseph Alan

2.Antony Jibin

3.Pesal Roshna Santra

...Petitioners/Petitioners/Appellants 2 to 4

Vs.

1.Eugene

2.Nelson

3.Johnson

4.Edison

5.Wilson,

Represented by his Power Agent,
Nelson.

6.Jacquiline

... Respondents/Respondents/Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 08-07-2024 passed in I.A.No.3 of 2023 in A.S.No.32 of 2010 on the file of the Additional District and Sessions Court, Padmanabapuram by allowing this civil revision petition.



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For Petitioners : Mr.S.Balamurugan

For Respondents : Mr.Ragavaran Gopalan for R1
Mr.S.Vashik Ali,
For Mr.R.Murugan for R2 to R6.

* * *

ORDER

Heard both sides.

2.One Eugene filed O.S.No.68 of 2006 on the file of the Sub Court, Padmanabhapuram for partition. Preliminary decree was passed on 31.12.2009. Aggrieved by the same, the fifth defendant filed A.S.No.32 of 2010 before the Additional District and Sessions Court, Padmanabhapuram. During the pendency of the appeal, the appellant died and his legal heirs were brought on record (revision petitioners). The revision petitioners filed I.A.No.3 of 2023 under Order XLI Rule 27 of Civil Procedure Code. The said I.A. was dismissed vide order dated 08.07.2024. Questioning the same, this civil revision petition came to be filed.

3.It is well settled that an application filed under Order XLI Rule 27 of Civil Procedure Code will have to be considered along with the main appeal.



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In this case, even before taking up the main appeal for final disposal, the I.A. was considered and dismissed. This is clearly contrary to the settled procedure.

In this view of the matter, the impugned order is set aside. The matter is remitted to the file of the first appellate Court. The first appellate Court will take up A.S.No.32 of 2010 for hearing immediately. I.A.No.3 of 2023 also will be taken when the first appeal will be finally disposed. The first appellate Court will dispose of the first appeal itself on merits and in accordance with law as expeditiously as possible.

4.The civil revision petition is allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

23.09.2024

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

The Additional District and Sessions Court,
Padmanabhapuram.



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G.R.SWAMINATHAN, J.

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