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C.R.P.(PD).No. 258 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.03.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No.258 of 2024

&

C.M.P.No. 1233 of 2024

1.M.C.Kuppuswamy

2.M.C.Swaminathan

3.M.C.Jaganthan

...Petitioners

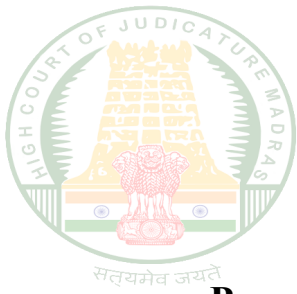
Vs.

1.R.Vijayalakshmi

2.S.R.Rakesh Kumar

3.K.Uma

...Respondents



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Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 06.10.2023 passed in IA.No.1 of 2019 in OS.No.2219 of 2003 by the VII Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr. M.K.Kabir
Senior Counsel
For Ms.M.K.Padma

For Respondents : Mr. S.Mahimai Raj
1 & 2

For Respondent 3: Mr. D.Sukumar

ORDER

Challenging the dismissal of their implead petition the proposed parties are before this Court. The facts which have given raise to this revision is herein below set out.



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2. The respondents 1 and 2 herein had filed a suit for permanent injunction restraining the original defendant M.C.Nithyanandam, from evicting them forcibly. The said M.C.Nithyanandam passed away on 03.03.2017 leaving behind his last "Will" and Testament dated 15.06.2011 and in terms of the "Will" the property stood allotted to the 2nd and 3rd petitioners and the 1st petitioner was appointed as an executor of the "Will".

3. The 1st petitioner in his capacity as executor had instituted OP.No.977 of 2017 before this Court for grant of probate in respect of last "Will" and testament of M.C.Nithyanandam. The 3rd respondent who is the daughter of the deceased had filed a caveat after which the OP was converted into testamentary suit in TOS.No.31 of 2018.

4. Pending the suit compromise was entered into between the 3rd respondent and petitioners. The suit was decreed on 28.06.2022 in terms of compromise. By virtue of this Judgement in TOS.No.31 of



2018 dated 28.06.2022 petitioners 2 and 3 and 3rd respondent are coowners of the suit schedule property. The 1st and 2nd respondents who are plaintiffs in the suit impleaded the 3rd respondent as the legal heir but had failed to implead the petitioners 2 and 3. Therefore, they had come forward with an application to implead themselves stating that they are proper and necessary parties to the proceedings by filing IA.No.1 of 2019 in OS.No.2219 of 2003.

5. In fact, the 3rd respondent in her written statement had also mentioned that the petitioners have to be impleaded into the suit. Despite all of this the learned Judge has proceeded to dismiss the IA filed by the petitioners. The learned Judge was of the view that the petitioners have to file a separate suit to claim a right to the property and held that they were neither necessary nor proper parties to the proceedings.

6. Challenging the said order, the petitioners are before this Court.



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7. Heard the learned counsels on the either side and perused the records.

8. The suit has been filed for an injunction restraining the defendants from interfering with the plaintiffs' possession and enjoyment of the property. The plaintiffs have claimed ownership to the superstructure but has admitted that the land does not belong to them. This land has now been bequeathed to the petitioners 2 and 3 who have derived a right to the property. M.C.Nithyanandam against whom the suit was originally filed had executed a "Will" in favour of the petitioners 2 and 3.

9. Therefore, whatever right M.C.Nithyanandam had in the property would devolve upon the petitioners. Therefore, they are necessary parties to the suit. The order of the learned Trial Judge that they are neither proper nor necessary parties and that they have to initiate separate proceedings to vacate the plaintiffs is perse erroneous.



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10. In view of the above, the Civil Revision Petition is allowed.

Consequently, the connected miscellaneous petition is closed. No costs.

11.03.2025

Index : Yes/No
Internet : Yes/No
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To

The VII Assistant Judge,
City Civil Court,
Chennai.



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P.T. ASHA, J,

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