

C.R.P.(MD)No.2184 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.08.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.R.P(PD)(MD)No.2184 of 2025

Mohammed Ali

... Petitioner(s)

Vs.

1. Asan Kani
2. Peer Mohammed
3. Fathima Beevi
4. Subaithal Beevi
5. Sowral Beevi
6. Rabithal Beevi
7. Taj Nijas Beevi
8. Mumtaj Beevi
9. Laila Beevi
10. Byroja
11. Shahul Hameed
12. Rykan Beevi
13. Abdul Kareem



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14. Kameeba

... Respondent(s)

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to direct the learned Subordinate Judge, Sankarankoil to take on the petitioner s application filed under section 3 and 4 of the Partition Act r/w section 151 of CPC in unnumbered IA SR No.8555 of 2024 in IA No.334 of 2010 in OS No.56 of 2008 on the file of the Learned Subordinate Judge, Sankarankoil and the same may be taken on file and allow the Civil Revision Petition.

For Petitioner : Mr.V.Sasi Kumar

ORDER

This Civil Revision Petition is filed seeking a direction to direct the learned Subordinate Judge, Sankarankoil, to take on the petitioner's application filed under sections 3 and 4 of the Partition Act read with Section 151 of the Code of Civil Procedure, in unnumbered I.A.SR.No.8555 of 2024 in I.A.No.334 of 2010 in O.S.No.56 of 2008, on the file of the learned Subordinate Judge, Sankarankoil and to allow the Civil Revision Petition.

2. Since no adverse order is going to be passed as against the respondents, notice to them is dispensed with.

3. The first respondent filed the suit for partition as against the other respondents in O.S.No.56 of 2008 and the said suit was decreed in their favour



by a preliminary decree in the year 2009. The petitioner had already purchased 9 out of 11 shares in the suit property as early as in the year 2000. However, he became aware of the preliminary decree only recently and also came to know that the final decree proceedings were pending before the trial Court in I.A.No. 334 of 2010. Immediately thereafter, the petitioner filed unnumbered interlocutory application in the year 2024 under Sections 3 and 4 of the Partition Act, seeking alienation of the remaining two shares in his favour. However, the said application was returned by the trial Court. Aggrieved by the said return order, the present civil revision petition has been filed by the petitioner.

4. The learned counsel for the petitioner would submit that in terms of Sections 3 and 4 of the Partition Act, where any other shareholder applies for leave to buy at a valuation the share or shares of the party or parties asking for a sale, the Court shall order a valuation of the share or shares in such manner as it may think fit and offer to sell the same to such shareholder at the price so ascertained. Further, as per Section 4 of the Act, where a share in a dwelling house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the Court shall, if any member of the family being a shareholder shall undertake to buy the share of such transferee. However, the trial Court, without properly

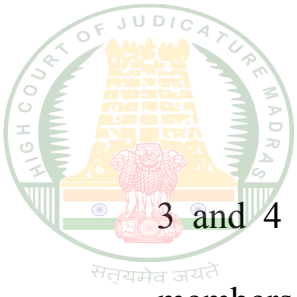


considering the above legal provisions, returned the unnumbered application filed by the petitioner, which is not sustainable. Accordingly, the learned counsel for the petitioner prays to allow the writ petition.

5. Heard the learned counsel for the petitioner and perused the materials available on record.

6. On perusal of the entire record, it is evident that the petitioner is a third party to the partition suit filed by the first respondent against the other respondents in O.S.No.56 of 2008. It is also an undisputed fact that the petitioner had already filed a suit for declaration of title and permanent injunction in O.S.No.17 of 2014 on the file of the District Munsif Court, Sivagiri, which was dismissed by judgment dated 28.12.2022.

7. Aggrieved by the same, the petitioner has preferred an appeal in A.S.No.12 of 2023, which is pending on the file of the Sub-Court, Sankarankoil. In the meantime, the petitioner has filed an unnumbered interlocutory application before the trial Court in the pending final decree proceedings, invoking Sections 3 and 4 of the Partition Act. However, the said provisions are not applicable to the petitioner, as he is not a member of the undivided family or a co-sharer in the partition suit. The benefit under Sections



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3 and 4 of the Partition Act is available only to the shareholders or family members who are parties to the suit and not to the third parties.

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8. While a third party may have the right to file an independent suit for partition or title, he cannot invoke the provisions of the Partition Act within the final decree proceedings of a suit to which he is not a party. Therefore, the return of the unnumbered interlocutory application by the trial Court is justified and does not warrant any interference by this Court.

9. Accordingly, the civil revision petition stands dismissed. There shall be no order as to costs.

06.08.2025

Index : Yes/No
Internet : Yes / No
PKN

To

- 1.The Learned Subordinate Judge, Sankarankoil.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI,J.

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