



C.R.P.(MD)No.2198 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.01.2025

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)No.2198 of 2023
and C.M.P.(MD).No.11192 of 2023

S.Mariammal ... Petitioner/Petitioner/3rd Party

Vs.

1.M.Mahesh ... 1st Respondent/1st Respondent/Plaintiff

2.M.Ramasamy

3.R.Selvaraj

4.R.Srinivasan ... Respondents/Respondents/Defendants

PRAYER : Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order, dated 04.07.2022 passed by the Subordinate Court, Thuraiyur, in I.A.No.1 of 2021 in O.S.No.368 of 2011.

For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.H.Lakshmi Shankar

ORDER

This revision petition has been filed to set aside the fair and decreetal order, dated 04.07.2022 passed by the Subordinate Court, Thuraiyur, in I.A.No.1 of 2021 in O.S.No.368 of 2011.

1/5



C.R.P.(MD)No.2198 of 2023

2.The facts in brief:

WEB COPY

Suit in O.S.No.368 of 2011 was filed by the first respondent namely Mahesh against the other respondents seeking the relief of partition and separate possession in respect of 1/4th share. Preliminary decree was passed and subsequent to that I.A.No.1 of 2021 was taken out by this revision petitioner under Order 1 Rule 10 (2) CPC to implead himself as party respondent in the preliminary decree stating that in the main suit the defendants did not appear. So ex parte preliminary decree was passed on 05.10.2012. On 09.07.2014, the first defendant and his wife Subbammal jointly executed settlement deed in respect of 6th item to the second defendant. That settlement deed came into effect and later the second defendant executed a settlement deed in respect of that property on 17.07.2020 in her favour. Ever since, she is in enjoyment as owner. The passing of preliminary decree came to her notice only recently. On that ground the impleading petition was filed.

3.That was resisted by the respondent stating that the second defendant stated to have executed settlement deed subsequent to the preliminary decree. So the petition is not maintainable. After hearing



C.R.P.(MD)No.2198 of 2023

both sides the trial Court dismissed the petition.

WEB COPY

4.Against which, this revision is preferred.

5.How the petition is maintainable after passing of preliminary is not understandable. If at all, the revision petitioner can file impleading petition in the final decree application. At the time of hearing, report was called for from Sub Judge, Thuraiyur, as to whether any final decree application is pending. Report submitted in the letter, dated 21.11.2024, that final decree application was filed in I.A.No.383 of 2019 and Commissioner was appointed. But, so far Commissioner report has not been filed. But, in the meantime, I.A.No.1 of 2021 was filed. It appears that this revision petitioner stepping into the shoes of the second defendant, what are the rights available to the second defendant, in pursuance of the preliminary decree, can be workout at the time of final decree application.

6.For that purpose the petitioner can file a petition in the final decree application namely I.A.No.383 of 2019. In the event of filing such



C.R.P.(MD)No.2198 of 2023

an application, there shall be a direction to the trial Court to allow the petition and implead the revision petitioner as a party and proceed to pass final decree in the presence of this revision petitioner and others in accordance with law.

7. With the above said directions, the revision petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

08.01.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
TM

To

1. The Subordinate Judge, Thuraiyur.
2. The Section Officer,
E.R. Section/V.R. Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



C.R.P.(MD)No.2198 of 2023

G.ILANGO VAN,J.

TM

C.R.P.(MD)No.2198 of 2023

08.01.2025