

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-08-2025

CORAM

THE HONOURABLE MR.JUSTICE P.B. BALAJI

CRP No. 3435 of 2025

Santha (Died)

1. Krishnamoorthy

S/o. Rathinam

2. Sakarapani

S/o. Rathinam

3. Perumal

S/o. Paramasivam

4. Elumalai

S/o. Paramasivam

5. Murugan

S/o. Paramasivam

6. Ramachandran

S/o. Paramasivam

7. Kumaravel

S/o. Kanthasamy Pathar

8. Ramesh

S/o. Kanthasamy Pathar

9. Raja

S/o. Kanthasamy Pathar



10. Chandra

W/o. Perumal Pathar

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11. Kasthuri

W/o. Krishnamoorthi

12. Gunavathi

W/o. Shanmugam

Petitioner(s)

Vs

1. V.Kesavan

S/o. Venkadasami

2.Muthukumaran

S/o. Kesavan

3.Kalaichelvi

W/o. Gandhimohan

4.Rajakumari

W/o. Suresh

Respondent(s)

PRAYER

To set aside the fair and decreetal order dated 20.02.2025 made in I.A. No. 137/2023 in OS No. 160/2014 on the file of Additional Sub - Judge, Tindivanam.

For Petitioner(s): Mr.J.Thomassaransingh

**ORDER**

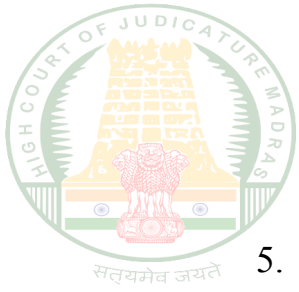
Heard Mr.J.Thomassaransingh, the learned counsel for the petitioner.

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2. Pending suit for partition and separate possession, the petitioner had sought for leave under Order XXIII to withdraw the suit with liberty to file a fresh suit for the same cause of action. However, the Trial Court has dismissed the application, as against which the present Revision Petition has been filed.

3. The learned counsel for the petitioner states that the Trial Court has observed that there is an avenue for the plaintiff to amend the plaint and include the omitted properties and proceed with the suit, more so, when the Trial has commenced. The apprehension of the learned counsel for the petitioner is that earlier when the petitioner had moved an application for amendment, the same was dismissed by the Trial Court and that it should not come in the way of the plaintiff seeking for amendment at this stage, i.e., subsequent to dismissal of the application seeking leave to withdraw the suit with liberty to file a fresh suit.

4. I find force in the apprehension of the learned counsel for the plaintiff. However, the fact remains that the suit is one for partition and there cannot be any partial partition. Therefore, whenever the plaintiff or even the defendants point out that there are other properties that are also available for partition, then the Trial Court has to necessarily permit the inclusion of the properties in the suit for partition.



5. In the light of the above, making it clear that the petitioner shall be entitled to move an application for amendment to include the omitted properties, that according to the plaintiff are also available for partition. Such application shall be formally entertained and allowed, giving liberty to the defendants to file an additional written statement to raise any objections they may have regarding the inclusion of the said properties. The learned counsel for the plaintiff is also entitled to seek necessary corrections regarding the dates, which have been incorrectly mentioned in the original plaint. With the above liberty, the Civil Revision Petition is disposed of. Consequently, the connected miscellaneous petitions, if any, are closed.

05-08-2025

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



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P.B.BALAJI J.

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