

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 14.03.2016**

**CORAM**

**THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR**

**C.R.P (PD) Nos.3880 and 3881 of 2014**

**and**

**M.P.No.1 of 2014**

1. Nallammal

2. B.Mahadevi

3. B.Chandru

... Petitioners in both CRPs

vs.

A.I.Imthathul Basheer

... Respondent in both CRPs

**Prayer in C.R.P.Nos.3880 and 3881 of 2014**

Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and final orders passed in I.A.Nos.572 of 2013 and 175 of 2014 respectively in O.S.No.651 of 2012 on the file of the V Additional District and Sessions Judge, Coimbatore, dated 09.07.2014 and to set aside the same.

For Petitioners : Mr.S.Gunalan  
in both CRPs

For Respondent : Mr.S.Prabakaran  
in both CRPs : Mr.S.Prabakaran  
for Mr.A.Saravanan

**COMMON ORDER**

The defendants in O.S.651 of 2012 on the file of the V Additional District Judge, Coimbatore are the petitioners in the revision petitions.

2. The respondent herein filed the above said suit initially for the relief of specific performance based on an agreement allegedly entered into between the respondent herein and late A.Balasubramani claiming that the agreement is evidenced by an irrevocable power of attorney dated 09.05.2011 and a Varthamana agreement dated 09.05.2011.

3. The petitioners herein / defendants in the said suit, on entering appearance, filed an application in I.A.No.572 of 2013 under Order VII Rule 11 C.P.C praying for the rejection of the plaint. Pending disposal of the said application under Order VII Rule 11 C.P.C, the respondent herein / plaintiff filed an application in I.A.No.175 of 2014 under Order VI Rule 17 C.P.C for amendment of the plaint seeking to incorporate an alternative prayer for a declaration that the respondent / plaintiff has a right to deal with the undivided half share of Late Balasubramani in the suit property in pursuance of the irrevocable

power of attorney dated 09.05.2011 and Varthamana Oppandham cum receipt dated 09.05.2011 even after the death of the said Balasubramani.

4. The learned trial Judge heard both the applications together, allowed the application for amendment, namely, I.A.No.175 of 2014 and dismissed the application for rejection of plaint, namely, I.A.No.572 of 2013 without assigning separate reasons for dismissing the said application, excepting the observation that in view of the order passed in I.A.No.175 of 2014 allowing the proposed amendment as the ground for dismissal of the said application. As against the dismissal of application No.572 of 2013, C.R.P.No.3880 of 2014 has been filed by the petitioners herein / defendants. As against the order allowing the amendment petition, namely, I.A.No.175 of 2014, C.R.P.No.3881 of 2014 has been preferred by the petitioners / defendants.

5. The respondent has entered appearance. After hearing the arguments advanced on both sides, to some extent, the learned counsel for the respondent / plaintiff submits that the respondent shall be permitted to withdraw the amendment petition, namely, I.A.No.175 of 2014. Similarly, learned counsel for the petitioners also submits

that the petitioners may be permitted to withdraw I.A.No.572 of 2013, namely the application filed under Order VII Rule 11 C.P.C without prejudice to their right to raise all the questions as a plea of defence in the main suit.

6. Separate endorsements to the said effect have been made by the learned counsel for the petitioners and by the learned counsel for the respondent.

7. The endorsements are recorded. In view of the endorsements, C.R.P.No.3881 of 2014 stands allowed and the order dated 09.07.2014 made in I.A.No.175 of 2014 is set aside. I.A.No.175 of 2014 is dismissed as withdrawn. C.R.P.No.3880 of 2014 is allowed in part and the order of the trial Court dated 09.07.2014 made in I.A.No.572 of 2013 is modified into one of dismissal as withdrawn, without prejudice to the right of the defendants to raise all the questions raised in that application as a plea of defence in the original suit.

8. As requested by the learned counsel appearing for both parties, the trial Court is directed to expedite the trial and dispose of the suit as early as possible, in any event, not later than six months

from the date of receipt of a copy of this order. No costs.  
Consequently, the connected miscellaneous petition is closed.

**14.03.2016**

Index: Yes/No  
Internet: yes/No

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To

The V Additional District and Sessions Judge,  
Coimbatore

**P.R.SHIVAKUMAR.J**

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