



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 09.06.2016

CORAM

WEB COPY

THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM

C.R.P. (MD) No. 1040 of 2016 (PD)  
and  
C.M.P. (MD) No. 5198 of 2016

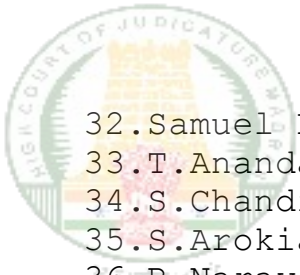
1. M. GANESHKUMAR

... Petitioner/1<sup>st</sup> Respondent/  
1<sup>st</sup> Defendant

Vs

1. Venkata Subramanian
2. Thirumalai Vadivu Ammal
3. Murugammal
4. E. Subramanian
5. Devasena
6. Sankara Kumara Priya
7. Esakki Sundaraj
8. Jeyapoorana Kala
9. A. Mani Kailasam
10. Ulaganathan (Died)
11. Saraswathi
12. Meenakshi Sundaram
13. Bama
14. Prema
15. Backiya Krishna
16. Ramani
17. Bhavani
18. Roshan
19. K. Arumai Kani
20. K. Manimegalai
21. Anitha Gnanaprakasi
22. M. Madasamy
23. P. Valliammal
24. R. Shankaravadivu
25. S. Sivagnanam
26. S. Vellaiammal
27. C. Bhatrakali
28. V. Muthulakshmi
29. M. Parvathy
30. R. Arunachalam
31. N. Lalitha

... Respondent/Petitioner/Plaintiffs



32. Samuel Rajaiya
33. T. Anandaraj
34. S. Chandra
35. S. Arokiasamy
36. R. Narayanan
37. J. Abraham Paul Ponraj
38. R. Alex Samraj
39. Packiyathammal
40. R. Arunachalam
41. Sankarammal
42. K. Ammaniammal
43. L. Nagarajan
44. S. Sankararamalingam Narayanan
45. S. Muthuveer Pillai
46. V. Gomathi
47. P. Subbulakshmi
48. A. Murugesan
49. A. Arumugam
50. T. Shankarkumar
51. T. Devapiriyam Roopavathi
52. Mary Kinsleybai
53. Soosai Nadar
54. Kovilpushpam
55. G. Subbulakshmi
56. C. Indra
57. S. Phillipkumar
58. N. Sivakamasundari
59. S. Rathinam
60. S. Prabhu Kanth
61. M. Shankarraaj
62. T. Ramar
63. J. Murugan
64. J. Paul Thisai Veeran
65. J. Ganesan
66. V. Muthukumar
67. S. Madan
68. M. Iyyappan
69. Khansiyamkumar
70. S. Jeyaraman
71. David Richard
72. N. Subha
73. S. Kosalai
74. S. Rajeswari
75. S. Mallika

... Respondents/Respondents/  
Defendants

**Prayer:** Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 27.01.2016 made in S.No.98 of 2009 passed by the learned I Additional District Judge, Tirunelveli.



For Petitioner : Mr. Ananth C. Rajesh

**ORDER**

This revision is directed against the order dated 27.01.2016 passed by the learned I Additional District Judge, Tirunelveli in I.A.No.177 of 2015 in O.S.No.98 of 2009.

2. The respondents 1 to 10, instituted a suit against the petitioner before the I Additional District Munsif, Tirunelveli in O.S.No.98 of 2009, for partition and separate possession. The petitioner filed their written statement in which, Paragraph No.9, it is stated that the suit is bad for non-joinder of various items of the properties. Subsequently, in the evidence, it was suggested that the suit is bad for non-inclusion of various properties. Thereafter, the plaintiffs filed I.A.No.177 of 2015, seeking amendment of the prayer to include some of the properties. Despite objection by the petitioner, the learned District Munsif allowed the application on 27.01.2016. Challenging the above said order, the present revision has been filed.

3. Heard Mr. Ananth C. Ramesh, learned counsel appearing for the petitioner and perused the materials available on records.

4. Mr. Ananth C. Ramesh, learned counsel appearing for the petitioner would submit that the amendment application cannot be allowed, since the respondents 1 to 10 have specifically stated in the plaint that the plaintiffs are entitled to get their share only three items of the suit property. The averments made in the plaint cannot be withdrawn by way of amendment. It is further submitted that the property now included, stands in the name of the school and it is also admitted in Paragraph No.4 of the affidavit. Therefore, the order is liable to be set aside.

5. The learned counsel has relied upon the judgment of the Apex Court in **GAUTAMSARUP V. LEELA JETLY AND OTHERS** reported in **(2008) 7 Supreme Court Cases 85** and the another judgment in **RAM NIRANJAN KAJARIA V. SHEO PRAKASH KAJARIA AND OTHERS** reported in **(2015) 10 Supreme Court Cases 203**, in support of his contention.

6. In **(2008) 7 Supreme Court Cases 85**, an application was filed to amend the written statement. In that case, the defendant had admitted in her original written statement the pleas and contentions of the plaintiff and in the amendment petition, he wanted to withdraw the application and in the above facts, the Supreme Court has held as follows:

"28. What, therefore, emerges from the discussions made hereinbefore is that a categorical admission cannot be resiled from but, in a given case, it may be explained or clarified. Offering explanation in regard to an admission or explaining away the same, however,



would depend upon the nature and character thereof. It may be that a defendant is entitled to take an alternative plea. Such alternative pleas, however, cannot be mutually destructive of each other."

7. Similar view was taken by the subsequent judgment reported in **(2015) 10 Supreme Court Cases 203** (cited supra).

8. In the case on hand, the respondents filed a suit for partition claiming their shares in the suit properties. In the above facts, the plaintiff filed the application to include the properties claiming that they are entitled to get their shares in those properties also. In Paragraph No.4 of the affidavit, it is only stated that the patta was issued in the name of the school in respect of one of the property.

9. It is settled law that patta will not confer title and it was issued only for payment of tax. The decisions relied on by the petitioner are not applicable to the facts of the present case. There is no illegality or irregularity in the order impugned in the revision.

10. In the result, the revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

The I Additional District Judge, Tirunelveli.

+1 cc to M/s. Ananth C. Rajesh, Advocate in SR.No.29122

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CSL/ARK-PV/29.06.2016 : 4P/3C

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