

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2017

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P.(PD)No.4224 of 2012  
& M.P.Nos.1 of 2012 & 1 of 2013

1.Rajalakshmi  
2.K.Elango

...

Petitioners

Vs.

1.K.Maheswari  
2.K.Pandian

...

Respondents

**PRAYER** : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal orders passed in I.A.No.19 of 2010 in O.S.No.14 of 2009 dated 06.04.2011 on the file of the court of District Judge, Thiruvavur.

For Petitioners : Mr.A.Muthukumar

For Respondents : Mr.M.V.Krishnan for R1  
No appearance for R2

**ORDER**

This Civil Revision Petition has been filed challenging the order dated 06.04.2011 made in I.A.No.19 of 2010 in O.S.No.14 of 2009 on the file of the court of District Judge, Thiruvavur.

2. The petitioners are defendants 1 & 2, the first respondent is the plaintiff and the second respondent is the 3<sup>rd</sup> defendant in the suit in O.S.No.14 of 2009 filed before the District Court, Thiruvavarur. The first respondent filed suit for partition against the petitioners and the second respondent. The petitioners filed written statement and are contesting the suit. The petitioners filed I.A.No.19 of 2010 under Section 151 CPC to include the properties mentioned therein in the schedule to the petition for partition. According to the petitioners, the husband of the first petitioner, father of the 2<sup>nd</sup> petitioner and respondents purchased the petition mentioned properties from the joint family funds in the name of his son-in-law Mr.Kannan / husband of the first respondent. The petitioners have claimed that properties mentioned in the petition are joint family properties and therefore those properties are also to be included in the suit for partition. The first respondent filed counter and denied all the averments made by the petitioners and submitted that the properties sought to be included in the schedule to the petition are absolute properties of her husband and those properties are not purchased by her father Kandasamy in the name of her husband. The first respondent has given particulars with regard to means by which her husband purchased the properties. The first respondent also stated that her husband is not a member

of the joint family.

3. The learned Judge, considering the averments in the affidavit, counter affidavit and materials available on record, dismissed the application holding that the petitioners have not furnished full particulars as to when funds were provided by Kandasamy for purchase of the properties mentioned in the schedule to the petition.

4. Against the order of dismissal dated 06.04.2011 made in I.A.No.19 of 2010 in O.S.No.14 of 2009, the petitioners have come up with the present Civil Revision Petition.

5. The learned counsel for the petitioners contended that in a suit for partition plaintiffs are defendants and defendants are plaintiffs and parties are entitled to bring to the notice of the court the left out properties and seek to include the same for partition. In support of his contention, the learned counsel relied on the following judgments wherein it has been held as follows -

**(i) 2010 (4) CTC 331 [A.A.Ganga v. A.R.Usha]**

*9. Admittedly, the suit is for partition. In a suit for partition of joint family properties, each parties are the plaintiffs and the defendants are*

also entitled to claim share by paying necessary court fee and therefore, in a suit for partition, it cannot be stated that the defendants are not entitled to include some other properties, which according to them, are liable to be partitioned among the parties. In a suit for partition, if some properties are not included in the suit and if those properties are also liable to be partitioned, it is open to the defendants to file an application to include those properties in the plaint schedule and contend that those properties are also liable for partition and hence, the normal rule that the plaintiff is the dominus litus and he has to decide, which party is to be impleaded and which properties are to be included is not applicable to the case for partition of joint family properties or joint properties owned by the parties. Therefore, with great respect, to the learned Judge that it cannot be stated that in a suit for partition, the plaintiff is the dominus litus and he cannot be compelled to include other items of the property in the plaint schedule as laid down in the judgment reported in 2005(3) MLJ 663 in the case of Ramasamy and another vs. P.Marappan and others.

13. Further in the judgment reported in 2008(3) SCC 717 in the case of Usha Ahamed vs. Rijwan Ahamd and others, the Honourable Supreme Court has held that the merit of the

*amendment is not a relevant consideration for allowing prayer for amendment.*

(ii) **2012 (7) MLJ 892 [Rani & anr. v. Chandra & Ors.]**

*5. Admittedly, the suit is for partition and in a suit for partition all the properties belonging to the family must be made available. It is the case of the revision petitioners that the properties which are sought to be included by way of amendment also belong to the joint family, though purchased in the names of the first respondent and her husband and those properties are also available for partition. As stated supra, in the written statement also, it is stated that two acres of property was purchased in the name of the husband of the first respondent and that property is also made available for partition. Though the first respondent denied the allegation that the properties were purchased out of joint family income and asserted that from their own income, the properties were purchased in their names, that can be decided only during trial and at this stage, the court need not have decided about the character of the properties.*

6. From the materials on record, it is seen that the petitioners have not substantiated their claim that husband of the first petitioner and father of the 2<sup>nd</sup> petitioner and respondents viz

Kandasamy provided funds for purchase of the said properties. On the other hand, the first respondent has furnished details as to how her husband purchased the properties and means for purchase of the said properties. The properties sought to be included stands in the name of husband of first respondent. He is not a member of joint family. In view of the failure on the part of the petitioners to prove that the properties are purchased out of funds provided by Kandasamy, the judgments relied on by the learned counsel for the petitioners are not applicable to the facts of the present case. The learned Judge, considered all the materials on record and dismissed the petition. In the said circumstances, I do not find any illegality or irregularity in the order passed by the learned Judge, warranting interference by this Court.

7. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

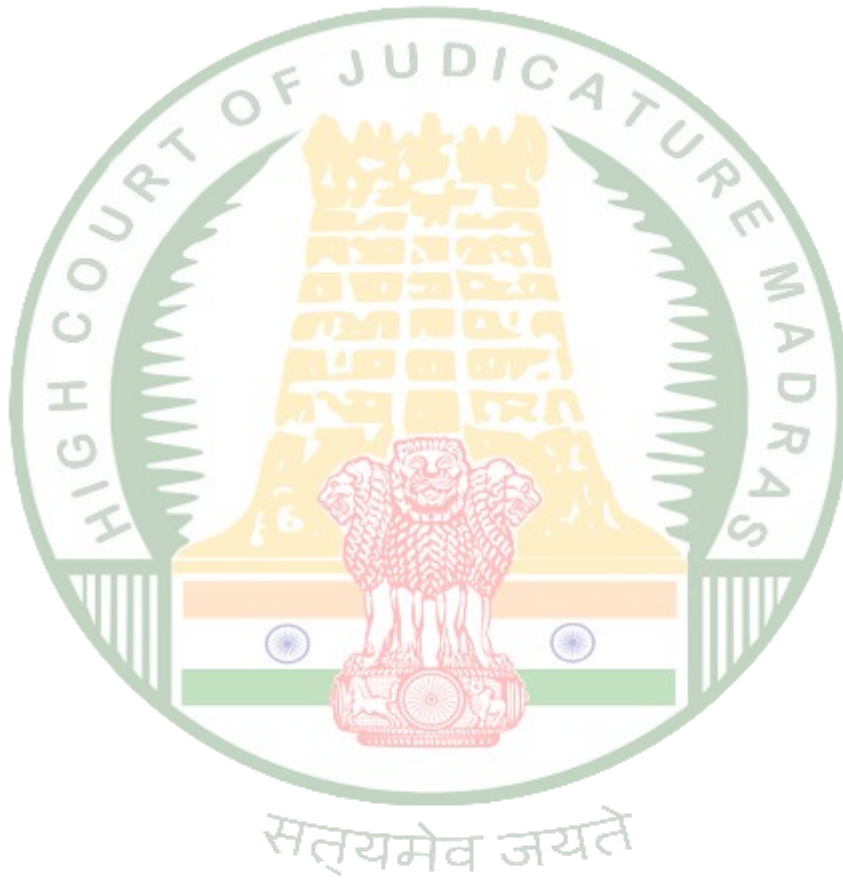
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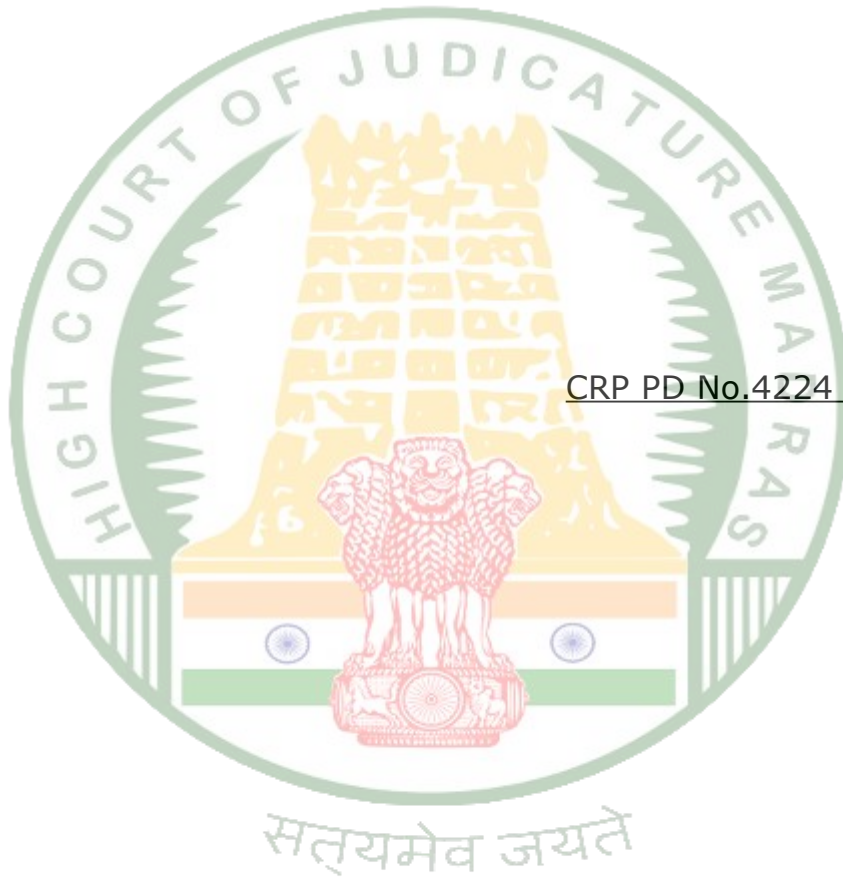
To

The District Judge,  
Thiruvavarur.



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**V.M.VELUMANI, J.**  
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