



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 04.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD) Nos.1039 and 1040 of 2017
and C.M.P. (MD) Nos.4610 & 6304 of 2017

C.R.P. (PD) (MD) No.1039 of 2017

J.Boby Andrew Jules ... Petitioner/Petitioner/
4th respondent/4th Defendant

-vs-

1.Esthar Paulina Jane
2.Mavis Deepika Sundara Vathana
... 1st & 2nd Respondents/1st & 2nd Respondents/
1st & 2nd Respondents/ 1st & 2nd Defendants

3.Kenneth Eugene Walker
... 3rd Respondent/3rd Respondent/
3rd Respondent/3rd Defendant

4.Navaneetham John
5.Sam Abel Jones ... Respondents 4&5/Respondents
4&5/Petitioners/Plaintiffs

(Respondents 1 & 2 were set exparte in Lower Court, hence notice to them may be dispensed with)

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the order passed in I.A.No.23 of 2017 in I.A.No.19 of 2017 in O.S.No.14 of 2011 dated 06.03.2017 on the file of the III Additional District Court, Tirunelveli by allowing this civil revision petition.

For Petitioner : Mr.H.Arumugam
For R1 & R2 : Exparte
For R3 : Mr.R.J.Karthick
For R4 & R5 : Mr.Ananth C.Rajesh

C.R.P. (PD) (MD) No.1040 of 2017

J.Boby Andrew Jules ... Petitioner/Petitioner/
5th respondent/4th Defendant

-vs-

1.Esthar Paulina Jane
2.Mavis Deepika Sundara Vathana

<https://hcservices.ecourts.gov.in/hcservices/> ... 1st & 2nd Respondents/1st & 2nd Respondents/ 3rd &
4th Respondents/ 1st & 2nd Defendants



3.Kenneth Eugene Walker

... 3rd Respondent/3rd Respondent/
Petitioner/3rd Defendant

4.Navaneetham John

5.Sam Abel Jones

... Respondents 4&5/Respondents 4&5/
Respondents 1&2/Plaintiffs

(Respondents 1 & 2 were set exparte in Lower Court, hence notice to them may be dispensed with)

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying set aside the order passed in I.A.No.24 of 2017 in I.A.No.21 of 2017 in O.S.No.14 of 2011 dated 06.03.2017 on the file of the III Additional District Court, Tirunelveli by allowing this civil revision petition.

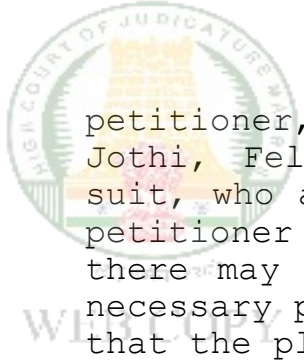
For Petitioner	: Mr.H.Arumugam
For R1 & R2	: Exparte
For R3	: Mr.R.J.Karthick
For R4 & R5	: Mr.Ananth C.Rajesh

C O M M O N O R D E R

The parties are described as per the nomenclature assigned to them in the suit.

2. The plaintiffs had filed the suit in O.S.No.14 of 2011 on the file of the III Additional District Court, Tirunelveli for partition of "B" and other schedule properties. During pendency of the suit, the plaintiffs had filed I.A.No.19 of 2017 for granting leave to file reply statement to the written statement and the Additional written statement filed by the 4th respondent and I.A.No.21 of 2017 was filed by the 3rd defendant for impleading certain parties as respondents 6 to 8/defendants 6 to 8 in the suit. I.A.No.19 of 2017 was allowed, whereas I.A.No.21 of 2017 was dismissed. Now, two I.A.Nos.23 and 24 of 2017 have been filed by the 4th defendant/petitioner herein to reopen I.A.Nos.19 & 21 of 2017 to receive the counter statements and both the applications were dismissed by the Trial Court, stating that the applications were filed only to drag on the proceedings. Challenging those orders, the petitioner is before this Court.

3. It is the case of the revision petitioner that he is an Advocate practising in the Courts of Tirunelveli and the Trial Court posted I.A.Nos.19 and 21 of 2017 for counter and disposal. Since the revision petitioner was engaged in the learned Chief Judicial Magistrate' Court in some other case, he did not sign the counter in time and when the cases were called, he could not be able to file the counter statement on the said date, on account of which, I.A.No.19 of 2017 filed by the plaintiffs was allowed and I.A.No.21 of 2017 filed for impleadment was dismissed. According to the



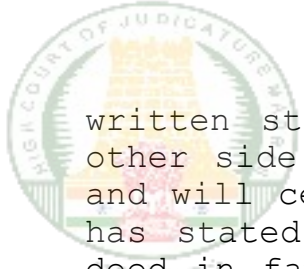
petitioner, 3rd defendant filed the application for impleading Anbu Jothi, Felix Jonathan and Alvish Nathaneal as defendants in the suit, who are none other than the wife and children of the revision petitioner herein. Unless they are arrayed as parties in the suit, there may be chances of dismissal of the suit for non joinder of necessary parties. It is the further case of the revision petitioner that the plaintiffs are attempting to introduce a new case by way of reply statement, which is inadmissible in law and therefore, it is prayed that the orders of the Trial Court need interference by this Court.

4. Learned counsel appearing for the plaintiffs would submit that the revision petitioner has been adopting dilatory tactics so as to prevent the Trial Court in passing judgment in the suit, which is against the order of the Hon'ble High Court directing the Court below to dispose of the suit as expeditiously as possible. No necessity has arisen for impleading the parties, who are the wife and children of the petitioner. He would further submit that allowing these petitions will cause hardship and irreparable loss to the plaintiffs and therefore, it is argued by the plaintiffs that these petitions are to be dismissed at the threshold.

5. Heard the learned counsel for the petitioner, learned counsel for R3 to R5 and perused the material documents available on record.

6. From the perusal of the averments set out in these petitions, it is seen that the petitioner, against whom the plaintiffs had filed the suit for partition and allotment of his respective shares in the suit schedule properties, was always ready and willing to contend his case. It is the strenuous argument of the petitioner herein that inspite of his sincere efforts for filing counter on the day of calling, pursuant to his engagement in the CJM's Court, he could not be able to represent the case and therefore, the non appearance is neither wanton nor wilful and the dismissal of the applications on that ground without affording an opportunity to put forth his argument. It is further argued that without impleading the necessary parties, the suit cannot be given quietus and such misjoinder will be detrimental to the petitioner herein at the time of disposal of the suit.

7. On analysis of the entire facts and circumstances and background of the case and upon hearing the submissions on either side, I find force in the contention raised by the petitioner herein. The Trial Court had dismissed the applications on the reasoning that counter affidavit was not filed on the said date, when it was specifically posted for the said purpose. It is the stand of the petitioner that though the case was posted for taking steps on the side of the plaintiffs, such order was not complied with and without taking any steps to serve the guardian of minors / proposed respondents, the application was dismissed. Granting leave to file reply statement to the written statement and the Additional



written statement filed by the 4th respondent and disallowing the other side to file counter citing his absence will fetch no result and will certainly deprive the rights of such party. The petitioner has stated that he had initially executed a registered settlement deed in favour of his wife Anbu Jothi, who in turn had executed a registered settlement deed in favour of her minor sons, namely, Felix Jonathan and Alvish Nathaneal and therefore, they are necessary parties to the suit. The refusal to implead them in the suit will create confusion at the time of execution of the order in case the plaintiffs succeed in it. Hence, this Court is of the view that both the orders of the Trial Court dated 06.03.2017 have no legs to stand and they are liable to be set aside.

7. In the result,

a) these civil revision petitions are allowed and the orders dated 06.03.2017 passed in I.A.Nos.23 and 24 of 2017 in O.S.No.14 of 2011 by the III Additional District Court, Tirunelveli, are hereby set aside;

b) the revision petitioner / 4th defendant is directed to put forth his arguments / file counter and complete the same within a period of two weeks from the date of receipt of a copy of this order and other parties are also at liberty to advance their arguments and complete the same within a period of one week thereafter;

c) in view of setting aside of the orders, the learned III Additional District Judge, Tirunelveli is directed to pass appropriate orders on the applications on merits and in accordance with law within a period of one week from the date of completion of the arguments by either side;

d) considering the fact that the suit is of the year 2011, the learned III Additional District Judge, Tirunelveli is further directed to dispose of the suit in O.S.No.14 of 2011 within a period of one month from the date of passing orders on the applications, by conducting trial of the suit on day-to-day basis without giving any unnecessary adjournments to either parties and the parties shall also extend their full cooperation for disposal of the suit in time as indicated above.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar

To:

1. The III Additional District Judge,

<https://hcservices.ecourts.gov.in/hcservices/>
Tirunelveli.



2.The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.H.Arumugam, Advocate SR.No. 66796
+1cc to M/S.M.S.Jawaharlal, Advocate SR.No. 66616
+1cc to M/S.R.J.Karthick, Advocate SR.No. 66660

C.R.P.(PD)(MD) Nos.1039 and 1040 of 2017
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JM/SKN RSK/SAR 3/19.06.2018/5P/7C