



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.08.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) (PD) Nos.1750 and 1751 of 2018
and

C.M.P. (MD) No.7606 of 2018

Dhanalakshmi ... Petitioner / Petitioner / 30th Defendant
(in both petitions)

Vs.

1.S.Rathinadevi,
W/o.C.Sureshkumar,
Sri Vasavi Complex,
Sri Vasavi Modern Rice Mill,
Vallam To Orathanadu Main Road,
Marungulam, Thanjavur Taluk and Munsifi.

2.M/s.Lakshmi Traders,
Represented by its Partners,
(I) Ratinadevi, (ii) Dhanalakshmi,
Carrying on business at
No.58, Needamangalam Road, Kumbakonam.

3.M/s.Vasavi Traders,
Represented by its Partners,
(I) Rathinadevi, (ii) Dhanalakshmi
Carrying on business at
Orathanadu Vallam Main Road,
Marungulam, Thanjavur. ... 1 to 3 Respondents / 1 to 3
Respondents / 1 to 3
Plaintiffs.
(in both petitions)

4.M.Hariharan
5.H.Lavanya
6.R.Ganesan

7.M/s.Growl Fertilizers,
Represented by its Proprietor,
Natarajan, Carrying on business at
No.58, Needamangalam Road,
Sakkottai, Kumbakonam.

8.M/s.Mohan Agro Centre,
Represented by its Proprietor,
Natarajan, Carrying on business at
No.58, Needamangalam Road,
Sakkottai, Kumbakonam.



9.M/s.T.V.S. & Sons,
Represented by its Manager,
Sakkottai, Carrying on business at
No.58, Needamangalam Road,
Sakkottai, Kumbakonam.

10.M/s.Arul Agencies,
Represented by its Manager,
Sakkottai, Carrying on business at
No.58, Needamangalam Road,
Sakkottai, Kumbakonam.

11.M/s.ATRC Tyre Retreading Company,
Represented by its Manager,
Sakkottai, Carrying on business at
No.58, Needamangalam Road,
Sakkottai, Kumbakonam.

12.Thirumalai Tiles and Granites,
Represented by its Proprietor,
Carrying on business at
No.58, Needamangalam Road,
Sakkottai, Kumbakonam.

13.S.S.Paul Tree Forum,
Represented by its Proprietor,
Carrying on business at
No.58, Needamangalam Road,
Sakkottai, Kumbakonam.

14.Green Star Fertilizers Limited,
Represented by its Proprietor,
Carrying on business at
No.58, Needamangalam Road,
Sakkottai, Kumbakonam.

15.B.Natarajan

16.B.Ravi

17.Ramco Cement Limited,
Represented by its Manager,
Carrying on business at
No.58, Needamangalam Road,
Sakkottai, Kumbakonam.

18.ARC Parcel Service Limited,
Represented by its Manager,
Carrying on business at
No.58, Needamangalam Road,
Sakkottai, Kumbakonam.



19.Arul Agencies,
Represented by its Manager,
Carrying on business at
No.58, Needamangalam Road,
Sakkottai, Kumbakonam.

20.K.R.R.Motors & TATA Motors Private Limited,
Represented by its Manager,
Carrying on business at
No.58, Needamangalam Road,
Sakkottai, Kumbakonam.

21.Global Industries,
Represented by its Manager,
Carrying on business at
No.58, Needamangalam Road,
Sakkottai, Kumbakonam.

22.Growel Fertilizer,
Represented by its Proprietor,
A.Natarajan,
Carrying on business at
No.58, Needamangalam Road,
Sakkottai, Kumbakonam.

23.Mahalakshmi Tiles,
Represented by its Manager,
Carrying on business at
No.58, Needamangalam Road,
Sakkottai, Kumbakonam.

24.J.Raman,
Vasavi Jewellery Shop,
Carrying on business at
No.14, Sarangapani Koil Street,
Keelaveedhi, Kumbakonam.

25.Arulselvam Vikas Thanga Maligai,
Carrying on business at
No.14, Sarangapani Koil Street,
Keelaveedhi, Kumbakonam.

26.Rajaraman,
Gold Purifier,
Carrying on business at
No.14, Sarangapani Koil Street,
Keelaveedhi, Kumbakonam.

27.Jaya Vilas Silver Shop,
Represented by its Proprietor,
Carrying on business at



No.14, Sarangapani Koil Street,
Keelaveedhi, Kumbakonam.

28.Mohan Agro Godown,
Represented by its Manager,
Carrying on business at
No.58, Needamangalam Road,
Sakkottai, Kumbakonam.

29.Muthukumar Gunny Business,
Represented by its Proprietor,
Carrying on business at
No.58, Needamangalam Road,
Sakkottai, Kumbakonam.

30.Rengasamy,
Sri Sathya Sayee Muthiyor Illam,
Represented by its Proprietor,
Carrying on business at
No.58, Needamangalam Road,
Sakkottai, Kumbakonam.

31.Rajkumar Cerejem,
Represented by its Proprietor,
Carrying on business at
No.14, Sarangapani Koil Street,
Keelaveedhi, Kumbakonam.

32.S.Abinesh ... 4 to 32 respondents / 4 to 32 respondents /
Defendants 1 to 29
(in both petitions)

Common Prayer: Civil Revision Petitions - filed under Article 227 of the Constitution of India, to set aside the order made in I.A.No.80 and 81 of 2018 in O.S.No.13 of 2008 on the file of the 2nd Additional District and Sessions Court, Thanjavur, dated 26.06.2018.

For Petitioners : Mr.R.Vijayakumar
For Caveator : Mr.V.Nandakumar
(in both petitions)

COMMON ORDER

O.S.No.13 of 2018 was filed by the respondents 1 to 3 herein before the II Additional District Judge, Thanjavur. The suit was filed seeking reliefs of partition and for accounts and also for permanent injunction against the defendants 1 and 2. But, during the course of the suit proceedings, it was felt that the revision petitioner herein was putting spokes in the wheel. Therefore, the plaintiffs took out an application for transposing the revision petitioner to the defendants' side. The revision petitioner joined

the ranks of the defendants as 30th defendant.

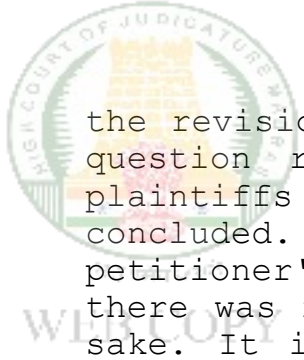
2. The revision petitioner filed I.A.Nos.80 and 81 of 2018 for reopening the case and for recall of P.W.1 so as to enable her to cross-examine P.W.1. These Interlocutory Applications were dismissed by the impugned order dated 26.06.2018. The correctness of the impugned order is challenged in these two Civil Revision Petitions.

3. The learned counsel appearing for the caveator / plaintiff contended that the Court below already passed an order as early as on 27.11.2017 that the revision petitioner and two others are not entitled to adduce evidence on other side in view of the fact that they are not at variance to the case of the plaintiffs and that therefore, they are not having any right to let evidence, after the evidence of the plaintiff has been closed. It is admitted that this order has not been challenged by the revision petitioner. That apart, the present Interlocutory Applications have been filed literally at the last moment. The learned counsel for the plaintiffs had already concluded his part of arguments. The learned counsel for the defendants 1 and 2 is about to conclude his arguments. At this stage, these applications were taken out. He also incidentally mentioned that the learned trial Judge is about to demit his office by the end of this month and that therefore, any reopening of the case would ensure that the learned trial judge, who had already heard the matter in part would not be able to pronounce judgment. If such a situation were to arise, that would amount to colossal waste of judicial time. He also took this Court through the reasons given by the trial Court, which have been set out particularly in Paragraph Numbers 5 and 6 of the impugned order. He wanted this Court to sustain the order impugned in the Civil Revision Petition by affirming the reasoning of the Court below.

4. This Court is in substantial agreement with the submissions made by the learned counsel for the caveator. However, it is also noted that even though the plaintiffs concluded their side of evidence as early as on 22.10.2016, these applications have been filed a full twenty months later. It is also important to note that the arguments are almost at the conclusion stage. This Court cannot lose sight of the fact that the trial Judge is to demit his office by the month end. Therefore, the apprehension expressed by the learned counsel for the plaintiffs will have to be fully allayed.

5. Nevertheless, this Court is of the view that an opportunity has to be given to the revision petitioner for only one reason. The revision petitioner was transposed from the side of the plaintiffs to the side of the defendants only at the instance of the contesting respondents herein. Secondly, after getting transposed, the revision petitioner filed her written statement. The learned counsel for the revision petitioner would claim that it should be construed as counter-claim.

6. Be that as it may. It is a fact that the plaintiffs filed their reply statement in response to the written statement filed by



the revision petitioner. The fact that holds the key to solving the question raised by the revision petitioner is this: i.e., the plaintiffs filed their reply statement after their side evidence was concluded. If really as observed by the Court below, the revision petitioner's stand is in unison with that of the other plaintiffs, there was no need to file their reply statement even for formality sake. It is for reason that this Court interferes with the order passed by the Court below. The common order dated 26.06.2018 dismissing I.A.Nos.80 and 81 of 2018 in O.S.No.13 of 2008 is set aside.

7. The matters cannot rest there. Appropriate directions will have to be issued by this Court for ensuring that the trial Judge is in a position to pronounce judgment before he demits his office.

8. The learned counsel for the caveator submits that the matter is posted on 16.08.2018 and pointed out that the learned counsel for Defendants 1 and 2 are continuing with their arguments. P.W.1 shall appear before the Court below in the after noon of 16.08.2018 and learned counsel for the revision petitioner shall conclude the cross-examination of P.W.1 on the after noon of 16.08.2018 itself.

9. It is made clear that the questions will be confined to the pleadings of the plaintiff. The learned trial Judge will exercise effective control in this regard. In any event, the cross-examination of P.W.1 will not spill over to 17.08.2018.

10. With these directions, the Civil Revision Petitions are allowed. Consequently, the connected Miscellaneous Petition is closed.

Sd/
Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar(CS-IV)

To
The II nd Additional District and Sessions Judge,
Thanjavur.

+1cc to Mr.V.NANDAKUMAR, Advocate, SR.No. 78555
+1cc to Mr.R.VIJAYAKUMAR, Advocate, SR.No. 78572

C.R.P. (MD) (PD) No.1750 and 1751 of 2018
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