

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED 04.01.2018

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM**C.R.P. (MD) No.302 of 2011
and M.P. (MD) No.1 of 2011**

Chithrakanthan ... Petitioner/Respondent/Plaintiff

Vs.

Santhanaraj ... Respondent/Petitioner/Defendant

PRAYER This Civil Revision Petition has been filed under Article 227 of Constitution of India to call for the records in I.A.No.688 of 2010 in O.S.No.7 of 2009 on the file of the Additional District Court / Fast Track Court No.2, Thoothukudi and set aside the order dated 22.10.2010 passed in it and dismiss the said I.A. with cost.

For Petitioner : Mr.C.Dhanaseelan

For Respondent : Mr.R.Vijaya Kumar

O R D E R

This Civil Revision Petition has been filed to set aside the order dated 22.10.2010 made in I.A.No.688 of 2010 in O.S.No.7 of 2009 on the file of the Additional District Court / Fast Track Court No.2, Thoothukudi.

2. The brief facts, which are relevant to dispose of the Civil Revision Petition, are as follows:

The suit in O.S.No.7 of 2009 was filed by the plaintiff for partition. It is stated in the plaint that the suit property was purchased by the plaintiff's father in the name of the plaintiff. According to the defendant, one item of property is left by the petitioner herein, as the plaintiff before the trial court. It is very much necessary to include the said property in the suit for partition. Therefore, the respondent, who is the defendant before the trial court, has filed an application and the same was allowed. Whether the property is the self acquired property of the petitioner or it is purchased from the income of the joint family property, is the issue to be decided by the trial court.

3. The learned counsel for the petitioner/plaintiff has argued that when the defendant himself has stated that there is no cause



of action and also admitted the partition long ago, this amendment petition to include the property would not have been considered by the trial court in view of the contents in Order 6 Rule 17 C.P.C.

4. In support of his contention, learned counsel for the petitioner has relied upon the judgment in *In Solavaiammal Vs. Ezhumalai Goundar* reported in **2010(1)CTC 159**. In that judgment, it is clearly observed that an amendment in a partition suit does not alter or change the character of the suit and it can be allowed for effective adjudication and to avoid the multiplicity of proceedings and amendment can be sought by either party.

5. The learned counsel for the respondent would submit that the trial court has rightly allowed the amendment application and he prays for dismissal of this Civil Revision Petition.

6. In the light of the above cited judgment, I am of the considered opinion that the order passed in I.A.No.688 of 2010 in O.S.No.7 of 2009 on the file of the Additional District Court/Fast Track Court No.2, Thoothukudi does not warrant interference by this Court.

7. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar

To,

The Additional District Court / Fast Track Court No.2,
Thoothukudi.

+ 1 cc TO Mr.R.Vijaya Kumar , Advocate in SR No. 40334
+ 1 cc TO Mr.C.Dhanaseelan , Advocate in SR No. 40292

CM
AE/JC/SAR1/21.02.2018/2P/4C

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and
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04.01.2018