



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.09.2019

CORAM:

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P (NPD) (MD) No.1292 of 2018

and

C.M.P. (MD) No.5451 of 2018

Shanmugasundaram

... Revision petitioner /
Petitioner / Plaintiff

Vs.

1.Venkateswaran

Padmanaban (died)

Gopalakrishnan (died)

Jayalakshmi Ammal (died)

Arunachala Vadivu (died)

Valliammal (died)

2.Dr.Palvannan

3.Abranandam

4.Auvaiyar

5.Thirumalai Ammal

6.Pushpam

Indira (died)

7.Banumathi

8.Krishnaveni

9.Palvannan

10.Rajeswari

11.Arockiaraj

12.Palvannan

13.G.Palvannan

14.G.Gurunathan

15.G.Revathi

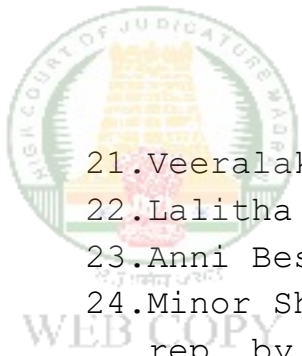
16.Sankaranarayanan

17.Hariharan

18.Balu

19.Leelavathi

20.Kuzhalvai Mozhi



21.Veeralakshmi
22.Lalitha
23.Anni Besant Ammaiya
24.Minor Shri, D/o.Sadhasivam
rep. by mother and next friend
Anni Besant Ammaiya

...Respondents 1 to 24 /
Respondents 1 to 33 /
Defendants

(Respondents 1, 3, 4, 5 and 7 to 24
are not necessary parties, hence
given up)

PRAYER: Civil Revision Petition is filed, under Under Section 115 of
CPC Constitution of India, against the fair and decreetal order
dated 10.04.2018 made in E.P.No.10 of 2016 in O.S.No.42 of 1980 on
the file of the District Munsif cum Judicial Magistrate's Court at
Sivagiri.

For Petitioner : Mr.M.V.Venkataseshan

For Respondents : Mr.V.M.Balamohan Thampi

O R D E R

This Civil Revision Petition has been filed against the order
of dismissal, dated 10.04.2018 passed in E.P.No.10 of 2016 in
O.S.No.42 of 1980, by the learned District Munsif cum Judicial
Magistrate, Sivagiri, wherein and whereby it is stated that the
respondents 2, 4, 12, 17, 18 and 21 in the Execution Petition were
passed away and therefore, the petitioner is supposed to have taken
steps to implead the legal heirs of the said respondents and that
since the petitioner in the Execution Petition failed to take any
steps to implead the legal heirs, the Court below has dismissed the
Execution Petition stating that the legal heirs of the respondents
2, 4, 12, 17, 18 and 21 also have right in the property.

2.The learned counsel for the revision petitioner filed an
affidavit stating that at present only R2/R7, R3/R8 and R6/R11 are
in the possession of the property in question. Therefore, if any
order is passed by the Court below, since these three respondents
are occupying the property, it would be sufficient to meet out the
ends of justice. Further he contended that the Court below without
considering the fact that the petitioner/plaintiff can choose the
respondent to execute the decree and it is not necessary to implead
all the respondents to execute the decree, provided, if they already
duly complied with the order of the Court below and vacated the
premises.

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3.On the other hand, the learned counsel for the respondents 2, 3 and 6 would fairly contend that the affidavit may be taken on record and appropriate orders may be passed.

4.Taking into consideration of the averments and submissions made by both the counsels and the affidavit filed by the petitioner stating that only the respondents 2, 3 and 6 are in the possession of the property in question, this Court is of the view that the petitioner/plaintiff can choose the respondent to file Execution Petition. Even in the suit, for example 10 defendants are there, if eight defendants are fully complied with the order of the Court, it is not necessary to implead all the respondents and only those who are not complied with the decree can be impleaded as contesting respondents and remaining parties impleaded only as a formal parties.

5.In such view of the matter, the order passed by the Court below is not legally sustainable and hence, the same liable to be set aside holding that as on date only the respondents 2, 3 and 6 are holding the property and the remaining parties are only formal parties and it is for the revision petitioner who are all respondents need to be impleaded while filing the Execution Petition.

6.Accordingly, this Civil Revision Petition is allowed. This Court directed the Court below to dispose of the suit in O.S.No.42 of 1980, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

The District Munsif-cum-Judicial Magistrate, Sivagiri.

Copy to:

The Section Officer,
VR.Section,
Madurai Bench of Madras High Court,
Madurai.

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+1 CC to M/s.V.M BALAMOCHAN THAMBI, Advocate (SR-87139[F] dated 17/09/2019)

+1 CC to M/s.M.V. VENKATASESHAN, Advocate (SR-86999[F] dated 17/09/2019)

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Order made in
C.R.P (MD) No.1292 of 2018
16.09.2019

raj2
JMN(25.09.2019) 4P : 6C