



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.02.2019

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P(PD) (MD)No.778 of 2013

WEB COPY

1.S.Senthil Kumar

2.S.Naveen Prasad

: Petitioners/Petitioners/Defendants 3&4

.. Vs ..

1.M.V.Surianarayanan

2.S.Shanthi

3.Canara Bank SME Branch,

Madurai,

Rep. by its Branch Manager. : Respondents /Respondents/

Defendants 1, 2 & 5

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to call for the records relating to the order dated 06.03.2013 made in I.A.No.31 of 2013 in O.S.No.182 of 2009 on the file of the VI Additional District Judge, Madurai, and set aside the same and allow this Civil Revision Petition.

For Petitioners : Mr.D.Rajkumar

For respondent 3 : Mr.R.Pandivel

for Mr.V.Ramalingam

Respondents 1 & 2 set *ex parte*

vide order 10/8/18

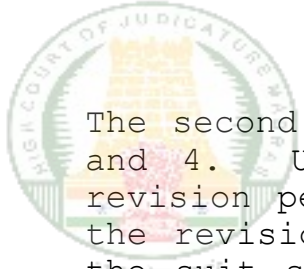
- - - - -

ORDER

This Civil Revision Petition is directed against the order passed in I.A.No.31 of 2013 in O.S.No.182 of 2009 on the file of VI Additional District Judge, Madurai.

2.The brief facts that are necessary for the disposal of this Civil Revision Petition are as follows:

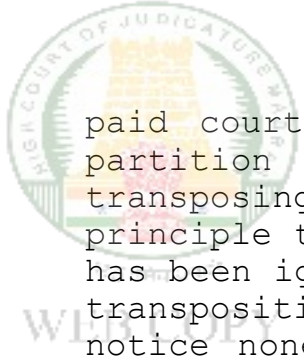
2.1.The first petitioner in this Civil Revision Petition is the third defendant in the main suit. The second petitioner is the fourth defendant in the suit. The brother of the petitioners one Pandiya Rajan filed a suit for partition in O.S.No.182 of 2009 on the file of the VI Additional District Court, Madurai, for partition of his 1/4th share and for permanent injunction. The revision petitioners were also impleaded as defendants 3 and 4 in the suit. As stated earlier, the revision petitioners are the brothers of the plaintiff. In the suit, it is admitted that the petitioners have adopted the plaint filed by the plaintiff for the claim of 1/4th share. Unfortunately, during the pendency of the suit, the plaintiff namely the first defendant's son died. The relationship between the parties are not in dispute. The plaintiff and the defendants 3 and 4 in the suit are the sons of the first defendant.



The second defendant in the suit is the mother of the defendants 3 and 4. Unfortunately, the plaintiff namely the brother of the revision petitioners died on 28.10.2012 in a road accident. Since the revision petitioners have already filed a written statement in the suit supporting the plaintiff's case, the revision petitioners have filed a petition to transpose themselves as plaintiffs 2 and 3 to put forth their case and to prosecute the suit for partition as they are also interested. However, the trial Court dismissed the petition holding that the petition to transpose defendants 3 and 4 as plaintiffs is not maintainable as the suit is neither withdrawn nor abandoned and that the plaintiff died during the pendency of the suit. It is further stated that the revision petitioners have no *locus standi* to transpose themselves as plaintiffs. By referring to Order 23, Rule 1 of C.P.C., the trial Court has come to the conclusion that the petition to transpose defendants as plaintiffs is not maintainable as Order 23, Rule 1 C.P.C. cannot be applied in a situation when the plaintiff died during the pendency of the suit. It is further noted that the first petitioner was set *ex parte* and that he has filed this petition without even taking steps to set aside the order setting him *ex parte*. The trial Court has further stated that the second petitioner who has adopted the stand taken by the plaintiff cannot seek to transpose himself to get into the shoes of the plaintiff. It is further stated that the second petitioner also can maintain a separate suit but cannot transpose himself in the suit that is likely to be dismissed as abated. It is also to be noted that the lower Court has dismissed the petition with cost of Rs.3,000/- as the suit itself is abated and no legal heirs of the plaintiff are brought on record. The lower Court has committed an error by dismissing the petition to transpose the defendants who are also sailing with the plaintiff in a suit for partition.

2.2. Normally, in a suit for partition especially in the case where the plaintiff and defendants 3 and 4 are brothers have a common interest and in this case one of the petitioners has admitted the claim of plaintiff and hence, remained *ex parte*. As far as the second respondent is concerned, he has also filed written statement adopting the stand taken by the plaintiff. In such circumstances, it is to be seen that the power of Court to transpose may arise in different situations. The lower Court failed to see that the power of Court to transpose the defendants as plaintiffs to prosecute the suit may arise in different circumstances. One of the context is one that is contemplated under Order 23, Rule 1A C.P.C. No doubt, in this case, the suit is neither withdrawn nor abandoned by the plaintiff but the plaintiff died during the pendency of the suit. Hence, the Court need not exercise the power as contemplated under Order 23, Rule 1A of C.P.C. However, the power of Court to Order transposition of parties is always available under Order 1, Rule 10 C.P.C. r/w. Section 151 C.P.C.

3. As indicated above, this is a case in which the defendants 3 and 4 are entitled to transpose themselves as plaintiffs. Merely because the defendants 3 and 4/the revision petitioners have not



paid court fee for getting their share declared in the suit for partition that does not prevent the revision petitioners from transposing at a later stage before the disposal of the suit. The principle that Court should always avoid multiplicity of proceedings has been ignored by the trial Court while disposing the petition for transposition of the revision petitioners as plaintiffs. Despite notice none appeared. Therefore, their names were printed in the cause list.

4.As a result, this Civil Revision Petition is allowed and the order of the lower Court dismissing the petition to transpose the revision petitioners as plaintiffs is set aside. The petition filed by the revision petitioners in I.A.No.31 of 2013 in O.S.No.182 of 2009 stands allowed. No order as to costs.

5.Having regard to the fact that the suit is pending for more than ten years, the trial Court is directed to dispose of the suit after completing the trial within a period of six months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (W)

// True Copy //

Sub Assistant Registrar(CS)

To
The VI Additional District Judge,
Madurai.

+1 CC to M/s.R.PANDIVEL, Advocate (SR-49909[F] dated 26/02/2019)

+1 CC to M/s.T.ANTONY ARUL RAJ, Advocate (SR-49915[F] dated 26/02/2019)

C.R.P (PD) (MD) No.778 of 2013
26.02.2019

SRM
KK/SAR/17.05.2019/ 3P- 4C

—