

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2020

CORAM

**THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN**

**C.R.P.NPD.Nos.391 & 393 of 2020  
and  
C.M.P.No.2065 of 2020**

1. Muthu  
2. Venkatachalam ... Petitioners in both CRPs

Vs.

1. Subramanian  
2. Muthayammal  
3. Selvam  
4. Sellammal  
5. Kandasamy  
6. Jayaprakash  
7. Jayabharathi  
8. Gopalakrishnan  
9. Rajendran

... Respondents in both CRPs

**Prayer in both Revisions:-** This Civil revision has been filed under Article 227 of the Constitution of India to set-aside the fair and decreetal order dated 17.12.2019 made in I.A.No.03 of 2019 & I.A.No.04 of 2019 in O.S.No.177 of 2012 on the file of the learned District Munsif, Mattur .

For petitioner : Mr. J. Ramakrishnan  
in both CRPs

### **COMMON ORDER**

The Civil Revision Petitions have been filed against the order dismissing the petitioners' application to transpose themselves as plaintiffs in the suit and also to reopen the suit.

2. The petitioners are defendants 1 and 3 in the suit. The first respondent herein filed a suit in O.S.No.177 of 2012 on the file of the District Munsif Court, Mettur , for declaration, declaring the sale deed dated 01.08.2012 said to have been executed by the second defendant in favour of the fifth defendant in respect of the suit schedule property as null and void and for partition to divide the suit property into six equal shares and also for permanent injunction. The above suit has been filed on the ground that the suit property is a joint family property of the plaintiff and the defendants 1 to 5. Whereas, the second defendant is claiming the properties as self-acquired and

executed a sale deed in favour of the fifth defendant. In the above circumstances, the suit has been filed to declare the said sale deed as null and void and also for partition to divide the property into six equal shares between the plaintiff and the defendants 1 to 5. In the said suit, now after completion of arguments, the defendants 1 and 3, who is the father and one of the sons of the plaintiff, have filed the application to transpose themselves as plaintiffs in the suit on the ground that the plaintiff is likely to abandon the suit in favour of the defendants 2 and 5 and also to reopen the suit enabling them to give evidence after transposing themselves as plaintiffs in the suit. The trial Court, by an order dated 08.11.2019 dismissed both the applications. Now, challenging the same, the present revision has been filed.

3. The learned counsel for the petitioners would submit that even though the trial was over and argument was also completed, there was a compromise between the family members, by which, the parties are persuaded to divide six equal shares, but there is no materials to prove the same. The petitioners apprehend that the plaintiff may go along with the defendants 2 and 5 and abandon the suit. Hence, the application has been filed by the petitioners and they want to let in additional

evidence in the suit. The Court below, without considering the same with proper perspective, dismissed the same. He would further submit that in the event of the suit is being dismissed, the plaintiffs may not file an appeal. In the above circumstances, the petitioners will lose the right to challenge the decree.

4. Heard the learned counsel for the petitioner and perused the materials available on records carefully.

5. It is a suit for partition. Admittedly, in the suit, trial was over and argument has also been over. At this stage, the applications have been filed on the ground that the plaintiff in the suit is likely to abandon the suit property. The other defendants have stoutly opposed the applications by filing counter. The trial Court, after considering the materials available on records, has held that there is no material available on records to show that the plaintiff is likely to abandon the suit or he wants to withdraw the suit. As per Order 23 Rule 1(A) of the Civil Procedure Code, only in the event of the plaintiff withdrawing the suit, the defendants can apply to transpose themselves as plaintiffs under Order 1 Rule 10 of Civil Procedure Code. In absence of any such eventuality, the present applications are not maintainable. I have carefully gone through the materials. In the instance case,

as already stated, the trial was over and the argument was also advanced by both the parties and there is no material available on record to show that the plaintiff is going to abandon the suit property or withdraw the suit. The contention is that, in the event of the suit being dismissed, the plaintiff may not file any appeal, is only an apprehension, and on mere apprehension, the petitioners cannot be permitted to transpose themselves as plaintiffs. Hence, I find no illegality or irregularity in the order passed by the Court below and I find no merit in the revision.

6. With the above directions, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

**03.02.2020**

mrp

Index : Yes/No

Internet : Yes/No

Speaking order/non speaking order

**To**

The District Munsiff Court,  
Mettur.

WEB COPY

**V.BHARATHIDASAN, J.,**

mrp



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