



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.09.2020

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.R.P. (PD) (MD)No.1514 of 2018
&CMP (MD) .No.6562 of 2018

1.Varadaraj
2.Vellayammal
3.Murugayee

...Petitioners / Petitioners

-Vs-

1.Palaniappan
2.Kuppa gounder
3.Chinnangi (died)
4.Palaniappa Gounder (died)
5.Chinnaponnu

...Respondents/Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 20.02.2018 in I.A.No.338 of 2017 in O.S.No.14 of 2009 on the file of the Sub Court, Kulithalai.

For Appellants	: Mr.K.Govindarajan
For R2 and R5	: No Appearance
For R1, R3 and R4	: Died

JUDGMENT

The revision petitions herein are the plaintiffs in O.S.No.14 of 2009 on the file of the Subordinate Court, Kulithalai. The said suit was laid for partition.

2.In the suit, the plaintiffs 1 to 3 have moved I.A.No.338 of 2017 for transposing the fourth plaintiff as a defendant, since the fourth plaintiff did not show enthusiasm to join them subsequent to the institution of the suit. This was dismissed by the trial Court, Vide the impugned order dated 20.02.2018, that it would change the structure of the suit.

3.Heard the learned counsel appearing on behalf of the petitioners.

4.This Court struggled to persuade its conscience to subscribe to the correctness of the view stated. It is a partition suit, it is not always necessary that the persons who share an



identical cause of action should necessarily figure as plaintiffs. Hence, in every partition suit, even a defendant is considered as a plaintiff. It might be that all the four plaintiffs might have shared the common strategy to seek partition and would have had common or identical cause of action. But, when one of the plaintiffs refused to join the other plaintiffs, the Court cannot thrust an unwilling plaintiff on the others nor vice-versa. The only option left is to make the unwilling plaintiff as a party defendant. That precisely the plaintiffs have attempted.

5.This Court finds that the approach of the Court below is founded on certain fundamental misconception and it is the duty of this Court to correct the same. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

ta/tsg-2

To:
The Subordinate Judge, Kulithalai.

Copy to
The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)

+1 CC to M/s.K. GOVINDARAJAN, Advocate (SR-17658[F] dated
22/09/2020)

+1 CC to M/s.H. LAKSHMI SHANKAR, Advocate (SR-17668[F] dated
22/09/2020)

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TR(06.10.2020) 2P 6C