



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 16TH DAY OF JULY 2021

THE HON'BLE MR. JUSTICE N. SESHASAYEE

A.No. 1871 of 2015

in

C.S.No. 808 of 2013

C.S.No. 808 of 2013 :-

Mrs. Lakshmi,
D/o. Late. V. S. Subramaniam @ V.S.Mani Naicker,
W/o. Mr. K. Manoharan,
No.26/1, Palani Andavar Koil Street,
Ayanavaram, Chennai – 600 023. ... Plaintiff

-Vs-

1. Mr. V.S. Rajaram,
S/o. Late. V.S. Subramaniam @ V.S. Mani Naicker,
No.5, Vembuli Naicker Garden Road,
Moolachatram, Madhavaram Milk Colony,
Chennai – 600 051.

2. Mr. Bhuvaneswaran,
S/o. Late. Jambulingam,
No.1062, TVS Colony, 48th Street,
A.A.Nagar, Western Extn.,
Area II, Chennai – 600 101.

3. Kudiyarasi,
D/o. Chellammal,
Old No.13, New No.18,
Mandapam Lane,
Kilpauk, Chennai – 600 010.

4. Rajakumari,
D/o. Chellammal,



Old No.13, New No.18,
Mandapam, Lane,
Kilpauk,
Chennai – 600 010.

5. Gowrishankar,
S/o. Chellammal,
Old No.13, New No.18,
Mandapam Lane,
Kilpauk, Chennai – 600 010.
6. Krishnakumar,
S/o. Late. Ganesan,
No.2, Kannan Nagar,
Pozhichallur,
Chennai – 600 079.
7. Mr. Premkumar,
S/o. Late. Ganesan,
No.24, Old No.2/694,
Nakkiran Street, East Mogappiar,
Chennai – 600 050.
8. Mr. Ananthakumar,
S/o. Late. Ganesan,
Block No.8, Dharmaraj Koil Street,
Ganapathy Nagar, Kolapakkam,
Chennai – 602 101.
9. Mr.V.S. Rajendran,
S/o. Late. V.S. Subramania Naicker @ V.S. Mani Naicker,
No.1, Vembuli Naicker Garden Road,
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Chennai – 600 051.
10. Mr. V.S. Rajasayanam,
S/o. Late. V.S. Subramania Naicker @ V.S. Mani Naicker,
No.1, Vembuli Naicker Garden Road,
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Chennai – 600 051.



11. Mr. V.S. Rajathilagam,
S/o. Late. V.S. Subramania Naicker W V.S. Mani Naicker,
No.1, Vembuli Naicker Garden Road,
Moolachatram, Madhavaram Milk Colony,
Chennai – 600 051.
12. Mr. V.S. Neelanesan,
S/o. Late. V.S. Subramania Naicker @ V.S. Mani Naicker,
No.1, Vembuli Naicker Garden Road,
Moolachatram, Madhavaram Milk Colony,
Chennai – 600 051.
13. Mrs. V. Hemanandhini,
D/o. Late. V.S. Subramania Naicker @ V.S. Mani Naicker,
No.2, Vembuli Naicker Garden Road,
Moolachatram, Madhavaram Milk Colony,
Chennai – 600 051.
14. Mrs. R. Jayashree @ Jayalakshmi,
D/o. Late. V.S. Subramania Naicker @ V.S. Mani Naicker,
No.2, Vembuli Naicker Garden Road,
Moolachatram, Madhavaram Milk Colony,
Chennai – 600 051. ... Defendants

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1. Mr. Krishnakumar,
S/o. Late. Ganesan,
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Chennai – 600 079.
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Chennai – 600 051.

... Applicants/Defendants 6 to 12

-Vs-

1. Mrs. Lakshmi,
D/o. Late. V. Subramaniam Naicker @ V.S. Mani Naicker,
W/o. Mr. K. Manoharan,
No.26/1, Palani Andavar Koil Street,
Ayanavaram,
Chennai – 600 023.
2. Mr. V.S. Rajaram,
S/o. Late. V. Subramaniam Naicker @ V.S. Mani Naicker,
No.1, Vembuli Naicker Garden Road,



Moolachatram, Madhavaram Milk Colony,
Chennai – 600 051.

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3. Mr. Bhuwaneswaran,
S/o. Late. Jambulingam,
No.1062, TVS Colony, 48th Street,
A.A.Nagar, Western Extn.,
Area II, Chennai – 600 101.
4. Kudiyarasi,
D/o. Chellammal,
Old No.13, New No.18,
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Moolachatram, Madhavaram Milk Colony,
Chennai – 600 051.



Application praying that this Hon'ble Court be pleased to strike out the entire plaint as barred under law and amounting to abuse of process of Court.

This application having been heard on 09.04.2021 in the presence of Mr.K.Bijai Sundar, Advocate for the Applicant herein and Mr.K.G.Vasudevan, Advocate for the 1st respondent herein and upon reading the Judges Summons and the affidavit of V.S.Rajasayanam filed herein and having stood over for consideration till this date and coming on this day before this Court for orders in the presence of said advocates for the parties hereto and this Court having observed that while this Court does not appreciate the plaintiff in not disclosing O.S.No. 679 of 2008 in the present Plaint, still it shall not aid the defendants in having the suit struck off the file of this Court, there is a substantial right involved in the suit, and that cannot be sacrificed on ground that may not have a direct bearing on the cause of action and so far as the allegation concerning non-impleadment of a necessary party, this is not a ground to reject the plaint, and can make an impact only in the final disposal of the suit, **it is ordered as follows :-**

That the A.No. 1871 of 2015 be and is hereby dismissed



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2. That there shall be no costs.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
16TH DAY OF JULY 2021.

Sd/-

ASSISTANT REGISTRAR (O.S-II)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies
of the Orders/Judgments/Decrees in this format.



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17.02.2022

A.No. 1871 of 2015
in
C..No. 808 of 2013

ORDER

DATED : 16/07/2021

THE HON'BLE MR. JUSTICE
N. SESHASAYEE

FOR APPROVAL: 22.02.2022

APPROVED ON : 23.02.2022



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Chennai – 600 051.



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Application praying that this Hon'ble Court be pleased to strike out the entire plaint as barred under law and amounting to abuse of process of Court.

This Application coming on this day before this court for hearing, **the Court made the following order:-**

The defendants 6 to 12 in the suit have come out with this application for striking the plaint off the records of this Court on the allegation that the pliant, rather the suit, is an abuse of process of this Court.

2. The plaintiffs herein have laid a suit for partition of a certain estate which according to them jointly belong to both the plaintiffs and the defendants. Plaintiffs father was one Subramaniam Naicker and he was married twice. Plaintiff and the first defendant are his children through his first wife, whereas, defendants 9 to 14 are his children through his second wife. Subramanian Naicker had two sisters namely Chellammal and Sampooram, whose children are the other defendants. As outlined earlier, the suit is laid for partition of some three items of properties each in



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3. In the affidavit filed in support of this application, it is averred that the plaintiff herein had earlier laid O.S.No.679 of 2017 before the City Civil Court for partition. This suit was laid against her father Subramaniam Naicker, his second wife/stepmother of the plaintiff (9th defendant) and the children born to them (who are arrayed as defendants 9 to 14 in this suit). There the plaintiffs sought partition over some 14 items of properties. Some of the defendants have challenged the pecuniary jurisdiction of the Court to decide the issue and this objection was upheld by the concerned Court and the plaint was ordered to be returned on 29.11.2007 for its presentation before the appropriate Court.

4. The applicant in this case would now contend that without representing the plaint as returned by the City Civil Court, the plaintiff came out with a fresh plaint, deleted some of the items which were scheduled in the earlier suit, added her cousins who were not parties to the earlier suit and literally sought the same relief that she has earlier sought. Most significantly, she has not disclosed anything about the earlier suit in O.S.No.679 of 2007 that she has filed nor she has whispered anything about its return by the Court concerned. Secondly, she has not impleaded her stepmother, who on the date of the suit on 22.07.2013 was alive.



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5. Heard both sides.

6. Mr.K.Bijai Sundar, learned counsel appearing for the applicant bullet pointed his submission as below:

- a) the suppression of the earlier suit would amount to suppression of a material fact
- b) that the plaintiff has been multiplying litigations on the same cause of action and that too would constitute an independent abuse.
- c) the plaintiff ought to have impleaded her stepmother Sarojini Devi in the Suit as she was alive on the date when the suit was laid. Non impleading a necessary party to the proceedings necessarily would lead to non suiting the plaintiff. He relied on the Authorities reported in *P.Srikanth Vs. R.Venkatesan & another*[2017 (3) LW 443], *Javailal and others Vs.N.Parthasarathy & others* [2017 (2) LW 245], *S.Kanakaraj and another Vs. S.Ramalingam* [2018 (2) M.W.N. (Civil) 236], *Bhagirath Prasad Singh Vs. Ramnarayan Rai* [AIR 2010 Patna 189] and *Expo Freight P.Ltd., Vs. Supreme Overseas Exports India P. Ltd.*, [Appl No.5445 of 2018 in C.S.No.750 of 2009].



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7. Per contra, Mr.K.J.Vasudevan, learned counsel appearing for the plaintiff submitted;

a) the suit is for partition and the cause of action is recurring.

Filing a fresh suit instead of presenting the returned plaint by the City Civil Court cannot be termed as an abuse of process.

b) Non disclosure of O.S.No.679 of 2008 would not benefit the plaintiff unduly in any way even though it could have been mentioned.

c) non impleadment of Sarojini Devi is an omission that can be corrected at any stage of the proceedings. Today, she is no more, and whatever interest she has in the property will devolve on her children who are arrayed in this suit as defendants 9 to 14. He added that what is significant in a suit for partition is denial of co-ownership between the parties and that has not been denied at all. Even if it is denied, that is a matter that has to be decided only during trial. He relied on the Authority in ILR 1999 Karnataka 1543.

8. There are two aspects which the counsel for the petitioner

<https://hcservices.ecourts.gov.in/hcservices/>

highlighted: (a) That the only course open to the plaintiff was to seek



restoration of O.S.No.679 of 2008 which his father had filed; and (b) non-disclosure of the dismissal of the said suit in the present plaint.

9. The suit is for partition, and the cause of action for the suit is recurring. A suit for partition or a suit for redemption are exceptions to Order 9 Rule 9 CPC. Therefore dismissal of the earlier suit for partition for non-prosecution cannot operate as a bar for filing a second suit for partition. As to the second aspect, while it is true that the dismissal of O.S.No.679 of 2008 is not disclosed in the present suit, the point is not so much about its non-disclosure, but how it would affect the cause of action. It would have been appreciable, if the plaintiff had disclosed the earlier suit in O.S.No.679 of 2008, and its dismissal in the present suit, but does its not non-disclosure affect the cause of action in the present suit? If the cause of action for a partition suit is recurring, then irrespective of whether O.S.No.679 of 2008 is referred to in the present suit or not, it may not have a bearing on the maintainability of the suit. In ***S.J.S. Business Enterprises Pvt. Ltd., Vs State of Bihar [(2004)7 SCC 166]*** and ***Anarunima Baruah Vs Union of India [(2007)6 SCC 120]***, the Hon'ble supreme Court has held that it is not every suppression of fact that would be counted as material, but only a suppression of a fact that affects the right of the parties would weigh as material. Telescoping the same to the facts before this court, it can be



stated when the suppression of O.S.No.679 of 2008 in the present plaint does not affect the rights of any of the parties, nor dent the cause of action of a suit, the same cannot be termed as material fact but can be termed only a relevant fact.

10. While this Court does not appreciate the plaintiff in not disclosing O.S.No.679 of 2008 in the present plaint, still it will not aid the defendants in having the suit struck off the file of this Court. There is a substantial right involved in the suit, and that cannot be sacrificed on ground that may not have a direct bearing on the cause of action.

11. So far as the allegation concerning non-impleadment of a necessary party, this is not a ground to reject the plaint, and can make an impact only in the final disposal of the suit.

12. In the result, this Application is dismissed. No costs.

Sd./- N.S.S.J.
16.07.2021

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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