

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No.3801 of 2012

and

CMP.Nos.1 & 2 of 2012

R.Santhosh

..Petitioner

Vs.

- 1.V.Rajkumar(died)
- 2.V.Radhakrishnan(died)
- 3.V.Manoharan
- 4.Jothi Mills Ltd.,
A Unit of Ramakrishna Industries Pvt Ltd,
No.315, Mettupalayam Road,
Jothipuram, Coimbatore
- 5.Rajeswari Ramakrishnan
- 6.Dr.S.R.K.Prasad
- 7.State Bank of India,
Peelamedu Branch,
Rep. by its Manager,
Avinashi Road, Coimbatore
- 8.R.Prabhu
- 9.R.Baba Chandrasekar
- 10.Thulase
- 11.Prasanthi
- 12.Vishnu Nichal
- 13.R.Vimala

(RR10 to 12 brough on record as LR's of
R1 viz. V.Rajkumar and R13 brought on record
as LR's of R2 viz. V.Radhakrishnan vide court
order dated 08.03.2021 made in CMP.Nos.12858,
12860, 12862, 12863, 12868 & 12865 of 2020
in CRP.No.3801 of 2012)

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 28.06.2012 made in IA.No.175 of 2011 in OS.No.279 of 2004 on the file of III Additional District Judge, Coimbatore.

For Petitioner : Mr.Sriram
for Mr.S.Kadarkarai
For Respondents : No appearance

ORDER

This civil revision petition is filed against the fair and decretal order dated 28.06.2012 passed in IA.No.175 of 2011 in OS.No.279 of 2004 on the file of III Additional District Judge, Coimbatore thereby allowing the petition to include the subsequent pleadings.

2. Though notice was served to the respondents, no one appeared on behalf of them before this Court in person or through pleader.

3. The petitioner is the second plaintiff and the first respondent is the fifth plaintiff in the suit. There are totally five plaintiffs. They filed suit for recovery of money as against the respondents 4 to 13 herein.

While pending the suit, the first respondent i.e. the fifth plaintiff filed petition under Order 8 Rule 9 of CPC r/w Section 151 of CPC to include the subsequent pleadings in the plaint. It is relevant to extract the provision under Order 8 Rule 9 of CPC as follows:

"9.Subsequent pleadings:- No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same."

Therefore, the subsequent pleadings cannot be claimed by the plaintiff and the same is available only to the defendant.

4. The first respondent is being the fifth plaintiff cannot sought for any relief under Order VIII Rule 9 of CPC. That apart, the first respondent filed petition to include the subsequent pleadings as follows:

"the suit the averments in para 12 (a) was not subscribed by me and without any consent para 12 (a) has been introduced. The same ought to be eschewed from the plaint pleadings. The alleged Will dated 24.10.2005 is disputed by me. I have filed a separate suit for partition in

OS.No.776 of 2007 pending trial on the file of Honourable Fast Track Court No.II, Coimbatore. The 2nd Plaintiff on his own had incorporated para 12 (a) which is totally unsustainable.”

5. It would amount to destruction of the entire plaint. The first respondent pleaded completely as against the plaint filed by the other plaintiffs. If at all, the first respondent is aggrieved by the pleadings of the plaint, he can very well transpose him as one of the defendant and file his objection to the suit. Therefore, the order passed by the court is perverse, illegal and liable to be set aside.

6. Accordingly, this civil revision petition is allowed and the order dated 28.06.2012 passed in IA.No.175 of 2011 in OS.No.279 of 2004 on the file of III Additional District Judge, Coimbatore is set aside. Further, considering that the suit is of the year 2004, the trial court is directed to complete the trial within a period of six months from the date of receipt of copy of this order. Consequently, connected miscellaneous petitions are closed. No order as to costs.

17.03.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No

lok

To

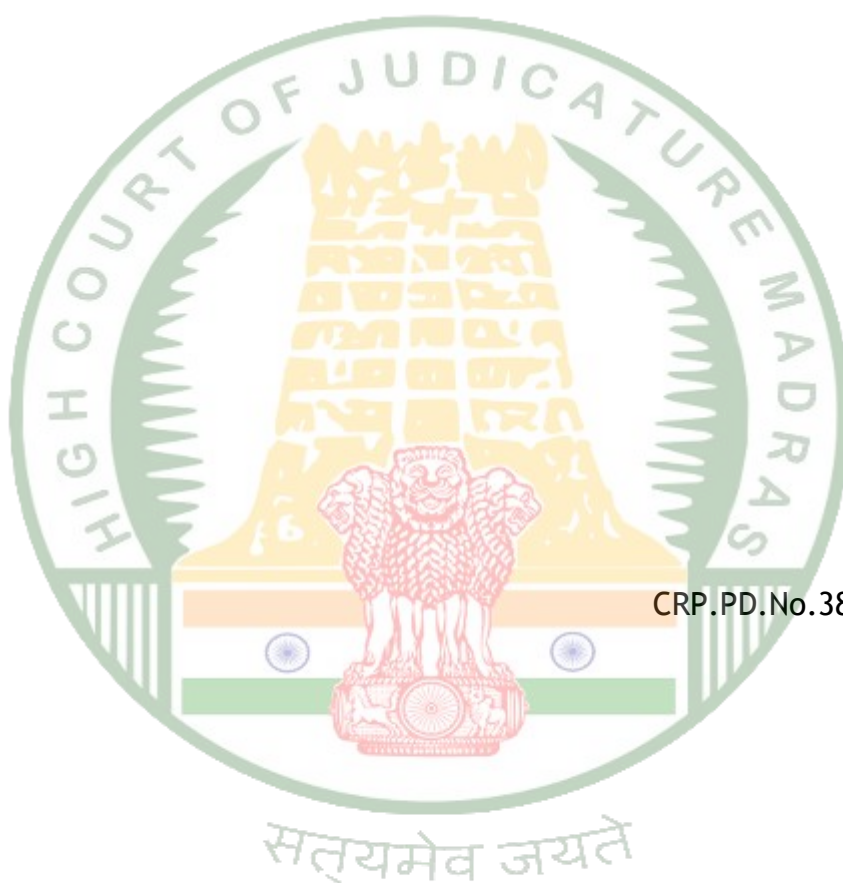
The III Additional District Judge,
Coimbatore



WEB COPY

G.K.ILANTHIRAIYAN,J.

lok



CRP.PD.No.3801 of 2012

WEB COPY

17.03.2021