



C.R.P.(PD)No.1042 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2021

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P.(PD)No.1042 of 2016  
and C.M.P.No.5821 of 2016

1.Unnamalai

2.Thulasiammal

Saraswathi (died)

3.Easwari

4.Kannammal

5.Sellammal

6.Malathi

.. Petitioners

Vs.

1.Velliangiri

2.Thulasimani

3.Selvakumar

4.Jagatheesh

5.Selvaraj

6.Mohanraj

.. Respondents

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 08.07.2015



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made in I.A.No.327 of 2015 in O.S.No.143 of 2013 on the file of the Sub Court, Perundurai.

For Petitioners : Mr.V.S.Kesavan

For RR 1 to 6 : No appearance

ORDER

(The matter is heard through “Video-conferencing/ Hybrid mode”)

Civil Revision Petition is filed against the fair and decretal order dated 08.07.2015 made in I.A.No.327 of 2015 in O.S.No.143 of 2013 on the file of the Sub Court, Perundurai.

2.The petitioners are the plaintiffs and respondents 1 to 4 are the defendants in O.S.No.143 of 2013 on the file of the Sub Court, Perundurai. The petitioners filed the said suit for partition of the suit properties, against their brother, 1<sup>st</sup> respondent and legal heirs of their deceased brother Palanisamy, respondents 2 to 4. One Palanisamy, who died intestate, is the brother of petitioners and 1<sup>st</sup> respondent, husband of 2<sup>nd</sup> respondent and father of respondents 3 and 4. The respondents 1 to 4 filed written statement and are contesting the suit. In the written



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statement, the respondents 1 to 4 have stated that 1<sup>st</sup> respondent, his two sons, who are the respondents 5 and 6 herein and respondents 2 to 4 have partitioned the properties among themselves by the partition deed dated 29.11.2010 and they are in separate possession. They have also filed original unregistered partition deed dated 29.11.2010 along with written statement. In view of the fact that the respondents 5 and 6, who are the sons of the 1<sup>st</sup> respondent are parties to the partition deed dated 29.11.2010, the petitioners filed I.A.No.327 of 2015 in O.S.No.143 of 2013 under Order I Rule 10(2) and Section 151 of C.P.C. to implead the respondents 5 and 6 as defendants 5 and 6 in the suit filed by them.

3.According to the petitioners, in order to avoid multiplicity of proceedings, they filed present I.A. The respondents did not file any counter affidavit. At the time of hearing, the learned counsel appearing for the respondents submitted that the respondents 5 and 6 are not necessary parties to the suit.



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4.The learned Judge dismissed the application on the ground that 1<sup>st</sup> respondent has not stated in the written statement that the respondents 5 and 6 are necessary parties to the suit and just because they are parties to the partition deed dated 29.11.2010, they are not necessary parties to decide the issue in the suit.

5.Against the said order of dismissal dated 08.07.2015 made in I.A.No.327 of 2015 in O.S.No.143 of 2013, the petitioners have come out with the present Civil Revision Petition.

6.Though notice has been served on the respondents 1 to 6 and their names are printed in the cause list, there is no representation on behalf of the respondents 1 to 6 either in person or through counsel.

7.Heard the learned counsel appearing for the petitioners and perused the entire materials on record.



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8.The learned counsel appearing for the petitioners contended that being parties to the alleged partition deed dated 29.11.2010, the respondents 5 and 6 are necessary parties to the suit as the 1<sup>st</sup> respondent claimed that already partition has been effected on 29.11.2010 between the respondents, divided the suit properties and they are in separate possession and enjoyment of the suit property. The said contention has considerable force. In a suit including the suit for partition, all necessary and proper parties must be impleaded as plaintiff or defendant as the case may be. This principle is to avoid multiplicity of proceedings and any order or judgment passed in the proceedings must be binding on all necessary parties.

9.From the averments made in the written statement filed by the respondents 1 to 4, it is seen that the respondents 5 and 6 as sons of 1<sup>st</sup> respondent are parties to the partition deed dated 29.11.2010. The 1<sup>st</sup> respondent's claim is that already partition has been effected in respect of the suit property, in which the respondents 5 and 6 are the parties. The



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learned Judge on erroneous reasoning that 1<sup>st</sup> respondent is not claiming that respondents 5 and 6 are necessary parties to the suit, dismissed I.A. The said erroneous finding of the learned Judge is liable to be set aside and is hereby set aside. I.A.No. 327 of 2015 in O.S.No.143 of 2013 filed by the petitioners is allowed. The learned Judge is directed to amend the plaint impleading respondents 5 and 6 as defendants 5 and 6 and proceed the suit after issuing summons to the respondents 5 and 6 in accordance with law.

10. With the above directions, the Civil Revision Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No  
Internet: Yes/No  
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**V.M.VELUMANI,J.**

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To

The Subordinate Judge  
Perundurai.

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