



C.R.P. (PD) No.3507 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2021

CORAM:

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

C.R.P.(PD) No.3507 of 2019
and C.M.P. No.23022 of 2019

1. Nallammal
2. Palaniyammal
3. Rajshwari

...Petitioners

Versus

1. Periasamy
2. Satheesh
3. P.Eswari
4. Paramasivam

...Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 1.08.2019 passed in I.A. No.1 of 2019 in O.S. No.193 of 2013 on the file of the Court of the Principal Subordinate Judge, Namakkal.

For Petitioners : Mr. S.R.Varun Karthik

For Respondents -1 & 2 : Mr. V.Ravichandran
3 & 4 : Mr. M. Selvam



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ORDER

This Civil Revision Petition is directed against the order passed by the learned Principal Subordinate Judge, Namakkal, in I.A. No.1 of 2019 in O.S. No.193 of 2013.

2. The revision petitioners are the plaintiffs 1 to 3 in O.S. No.193 of 2013 on the file of the Principal Sub Court, Namakkal. The revision petitioners along with respondents 3 and 4 filed a suit for partition and separate possession of the plaintiff's 4/10th share in all the suit properties. It is the case of the revision petitioners that the suit properties are the joint family properties. The respondents 1 and 2 who are defendants in the suit filed a written statement disputing the character of suit properties on the basis that their father executed a Will in favour of first defendant and that the first defendant had executed a settlement deed in favour of the second defendant. It is seen from the plaint that the first petitioner is the wife of one Chinnagounder and petitioners 2 and 3 are the daughters of Chinnagounder. The respondents 2 to 4 are the grand children . The first respondent is the son of Chinnagounder. During pendency of the suit it is stated that the respondents 3 and 4 who were entrusted to conduct the case was acting against the interest of the revision petitioners. Respondents 3 and 4 herein are plaintiffs 4 and 5 in the suit. It was further stated that the advocates



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engaged by respondents 3 and 4 reported no instruction before the trial Court. It

is in the said circumstances the revision petitioners expressed some apprehension because of the attitude of respondent 3 and 4. Hence, the revision petitioners filed an application in I.A. No.1 of 2019 under Order 1 Rule 10(2), before the Principal Subordinate Judge, Namakkal, to transpose plaintiffs 4 and 5 as defendants 3 and 4 in the suit. The trial Court dismissed the application as not maintainable. The trial Court was of the view that the provision under Order 1 Rule 10(2) C.P.C. was to strike off or add parties to the suit on the application of the parties and that it cannot be used for transposing some of the plaintiffs as defendants or defendants as plaintiffs. It is also admitted that evidence on plaintiff's side and defendant's side were completed and therefore, it was contended that the plaintiffs 4 and 5 cannot be transposed as defendant 3 and 4.

3. It is seen that the petitioners have come up with a specific plea about the conduct of respondents 3 and 4. It is stated that the respondents 3 and 4 have shown their attitude in support of defendants. It is well settled that the Court has power to transpose any one of the party who has been arrayed either as plaintiff or defendant depends upon the need or if the cause of action survive. This Court, in the case of *Selvaraj Vs. Sundararajan*, dated



15.04.2005, has considered the scope of power of Court to transpose. After

finding that Order 23 Rule 1-A C.P.C does not contemplate a situation of transposing any one of the plaintiff, as defendant, this Court has recognized the inherent power under Section 151 C.P.C. The relevant paragraphs of the judgment are extracted hereunder for convenience:

“... 10. The Third Plaintiff is the Brother of First and Second Plaintiff and one Krishnan - Husband of the Fourth Plaintiff-Mercy. The Third Plaintiff has signed in the Vakalat, Complaint and other relevant affidavits. But, during the trial Stage, the Third Plaintiff, figuring as Witness on the side of the Defendants has denied the signatures in the Vakalat, Complaint and other records. The Third Plaintiff has turned around and deposed against the Plaintiffs stating that the Suit Property has been in possession and enjoyment of the Defendants. Order 23 Rule 1-A C.P.C provides for the circumstances in which the Defendant could be transposed as the Plaintiff - i.e. where the Suit is abandoned or withdrawn, the Defendant could be transposed as the Plaintiff. Order 23 Rule 1-A C.P.C does not provide for transposition of the Plaintiff as the Defendant. But, the power of the Court is wide enough to transpose the proper and necessary parties for complete adjudication. When the Third Plaintiff has joined with the Defendants 1 and 2, it is just and necessary to transpose him as the Defendant. The Application for transposition of the Third Plaintiff need to be countenanced in the interest of facts and circumstances of the case.

11. In the decision reported in Vasantha Ammal v. V.P. Dhanaraj (1990 (1) L.W. 209), the Letters Patent Appeal arose out of the dismissal of the Petition for transposition of the Second Respondent/Second Defendant in the Appeal as the Second Appellant in the appeal. That Application was dismissed by K.M.NATARAJAN, J. As against the Judgment, Letters Patent Appeal has



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been preferred by the Second Defendant/Second Respondent for transposing as the Appellant. Holding that the power of transposition is wide enough and that the Court should not abdicate its discretionary power for ordering transposition, the Division Bench has held, "...On the question of transposition of parties, the powers of Court are wide enough to confer a discretion on it to transpose the necessary and proper party if that is required for an effective and a comprehensive adjudication of the controversy in the lis. The use of the discretion will depend upon the facts and circumstances of the case. This discretion is not an unbridled one, but is circumscribed by two broad limitations. One is, where valuable rights have accrued to the other side. The other is, where there is lack of bona fides on the part of the party seeking transposition, in that he has no plausible case to agitate, having a genuine interest in the lis. In these circumstances, the Court will fetter its hands and will not exercise its discretion. But, the question has to be decided depending on the facts of each case and by bare recapitulation of the principles; the Court should not abdicate its discretionary power for ordering transposition, where, in fact, that application needs to be countenanced in the interests of justice and on the facts of the case...." The principle in the above case where the Second Defendant sought to be transposed as Appellant, applies to the case in hand where the Third Plaintiff is sought to be transposed as the Third Defendant.

12. Though Order 23 Rule 1-A C.P.C does not contemplate such situation, the Trial Court ought to have exercised its power, invoking the power under Section 151 C.P.C. The inherent power under Section 151 C.P.C is complimentary to the powers expressly covered under the Code of Civil Procedure. In many cases where the circumstances so required, the Court has acted invoking the inherent power ex debito justitiae and to do real and substantial justice for the administration for which alone, the inherent power exists. The discretion vested in the Court is to be exercised depending upon the



various circumstances and facts arising in the cases. It is to be noted that the Third Plaintiff having joined with the Plaintiffs in filing the Suit, his name cannot be simply strike off nor the Plaintiff can continue the Suit when he continues to be on record. The Trial Court ought to have considered the fact and circumstance that the Third Plaintiff having filed the Suit as turned around against the Plaintiff and sailing with the Defendant. Under such circumstances, in the ends of justice, invoking the inherent jurisdiction the Trial Court ought to have allowed the Application.”

4. In a situation where some of the plaintiffs are put to embarrassment or surprised, it is always open to the Court to transpose few of the plaintiffs as defendants to protect the common interest of persons who are instrumental in filing the suit. In this case, the suit was filed for partition claiming the legitimate share of plaintiffs as legal heirs of the deceased Chinnagounder. If the petitioners' right as plaintiffs is affected by conduct of a few of co-plaintiffs, it is always open to them to protect their right in the course of proceedings. A situation may arise when some of the co-plaintiffs may give a statement which is true as seen from the records. Even in such case, the Court may look into the pleadings to find whether the co-plaintiffs have spoken the truth. In the present case, it is stated that the plaint was signed by the respondents 3 and 4, consciously. When they give a statement contrary to the plaint or proof affidavit at the time of examination, it is always open to the other plaintiffs to complain that the plaintiffs who are sought to be transposed



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as defendants have acted against the interest of other plaintiffs, by their conduct during the course of trial. In the affidavit filed in support of the petition before the lower Court, it is stated that their previous counsel reported no instruction and failed to cross examine the witness examined by defendant. It was further stated that the case was entrusted to plaintiffs 4 and 5.

5. In the peculiar circumstances of the case, this Court is unable to sustain the order of lower Court. Hence, this Civil Revision Petition is allowed and the fair and decreetal order dated 01.08.2019 passed by the Principal Subordinate Judge, Namakkal, in I.A. No.1 of 2019 in O.S. No.193 of 2013, is hereby set aside. No costs. Consequently, connected miscellaneous petition is closed.

It is stated that at the time of filing the revision petition, the evidence on the side of plaintiffs are completed and it is posted for cross examination of D.W.1. The lower Court is directed to expedite the trial and dispose of the suit as early as possible preferably within a period of six months from the date of receipt of a copy of this order.

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Index: Yes/ No
Speaking Order / Non-Speaking Order
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S.S.SUNDAR, J .,

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Copy to:

The Principal Subordinate Judge, Namakkal.

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