

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2021

CORAM

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

C.R.P.(PD) No.3083 of 2018 and
CMP.No.17822 of 2018

Lakshmamma

.... Petitioner

Vs

- 1.R.Venkatasamy
- 2.Vekatamma
- 3.Gowramma
- 4.Swetha
- 5.Shylaja
- 6.Prasanth
- 7.M/s.Agri Hills Real Estates,
India Pvt Ltd., rep. by N.Nagaraja
Reddy, Managing Director
- 8.L.Sudharsankumar
- 9.G.Sudha
- 10.K.Manohar Reddy
- 11.R.Nirmala
- 12.C.Narayanaraj
- 13.S.Lakshmi
- 14.C.N.Arathi
- 15.K.Nishanth
- 16.Amaresha
- 17.K.Manjula
- 18.Lakshmaiah
- 19.R.Bhagya
- 20.V.Santhosh Kumar

- 21.V.Thimmarayappa
- 22.V.Munieswari
- 23.R.Vimalraj
- 24.C.Manjunatha Reddy
- 25.Minor J.ChethanyaReddy
rep. by natural guardian father
R.Jayapal Reddy
- 26.Minor J.LalithaNandha,
rep. by natural guardian father
R.Jayapal Reddy
- 27.R.Kalaiselvi
- 28.Muniyamma
- 29.R.Lakshmi
- 30.B.Sushilamma
- 31.R.Santhamma
- 32.Shreekant
- 33.Yellappa
- 34.Manjula
- 35.V.Rashmi
- 36.B.Rajanna
- 37.Prabhakar
- 38.H.Govinda Rao
- 39.H.Krishna Rao
- 40.Rajamma Bai
- 41.V.Umesh
- 42.B.Ravikumar
- 43.P.Jayapal
- 44.S.Rukumani
- 45.C.Saritha
- 46.R.Jayalakshmi
- 47.K.Indirakanthan
- 48.R.Sridhar
- 49.G.Usha
- 50.Sujathamma
- 51.K.Venkateshwara Reddy
- 52.S.Radha

- 53.B.Muniyappa
- 54.Y.Bharathi
- 55.Sunandamma
- 56.C.Lakshmanan
- 57.B.N.Gopi
- 58.T.Venkatesh
- 59.Sakunthala
- 60.K.Nagaraj
- 61.R.Karthik
- 62.V.Nagaraj
- 63.R.N.Vasanth Reddy
- 64.C.Manjunatha Reddy
- 65.Susila
- 66.Renuka
- 67.R.Ramesh
- 68.K.Manjunatha
- 69.Bharathi
- 70.Dhanalakshmi
- 71.B.N.Gopi
- 72.R.Madhu
- 73.M/s.Sree Vijaya Lakshmi Real Estate, its proprietor
K.Manohar Reddy
- 74.R.Raja Reddy
- 75.R.Suguna
- 76.Pramila
- 77.M.Shankara
- 78.M.Mohanamma
- 79.Manimegalai
- 80.V.Mohan
- 81.Rajuram
- 82.K.Krishna
- 83.N.Kalapana
- 84.Palakshi
- 85.S.Manjunatha Reddy
- 86.B.S.Lakshman
- 87.Kavitha



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88.K.T.K.Jiminraj
89.Jithesh Nelliyeri Padikkal
90.K.Prasanth
91.M/s.Modern Builders and City Developers,
rep. by P.Manikandan ... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to strike out the plaint in OS.No.93 of 2015 on the file of the Principal District Court, Krishnagiri.

For Petitioner : Mr.B.Ramamoorthy

For Respondents

For R1 : M/s.R.Poornima

R2 to 91 : Given up

ORDER

This Civil Revision Petition is filed to strike out the plaint in OS.No.93 of 2015 on the file of the Principal District Court, Krishnagiri.

2. The learned counsel for the petitioner submitted that the petitioner is the second defendant in the suit filed by the first respondent herein for partition. He further submitted that the plaint itself is not

sustainable since there is no cause of action to maintain the suit. His mother Venkatalakshmamma already filed suit for partition representing the first respondent in OS.No.25 of 2006 on the file of the District Munsif Court, Hosur as against the petitioner and her sister and mother and the same was withdrawn by the judgment and decree dated 02.11.2006 for the reason that they settled the issue out of the court. When the first respondent's mother was settled with due share, the first respondent has no right in the suit property and already it become absolute in favour of the petitioner and his brother as per the judgment and decree passed in OS.No.25 of 2006. Once the suit was filed and dismissed, the present suit is hit by *res judicata* when the present suit is filed for very same relief of partition in respect of the very same property. In fact, the petitioner also filed suit for partition in OS.No.76 of 2006 as against her mother and brother and she was allotted her share in the suit property admeasuring seven acres. Therefore, it cannot be partitioned again by way of the present impugned suit. Therefore, he sought for strike of the plaint.

3. Per contra, the learned counsel for the first respondent submitted that the present suit has been laid for partition in respect of the

suit properties as against the petitioner and her brothers' legal heirs, namely the respondents 3 to 6 herein. While pending the suit, the first respondent also filed petition to amend the prayer to include the prayer of declaration declaring that the judgment and decree passed in OS.Nos.25 of 2006 and 76 of 2006 as null and void for the reason that in the suit filed by the petitioner herein in OS.No.76 of 2006, the first respondent was not party. Therefore, it would not bind him and the amendment petition is still pending. That apart, there was no settlement between the first respondent's mother and other family members, while the suit was pending in OS.No.25 of 2006. What circumstances the mother of the first respondent herein had withdrawn the suit filed for partition, the first respondent had no knowledge about the same. After attainment of majority, the first respondent filed the present suit for partition in respect of the suit property. That apart, the present suit has been laid not only for partition and also challenging the decree passed in OS.No.76 of 2006, OS.No.68 of 1999 and OS.No.25 of 2006. Therefore, there are triable issues to be decided in the impugned suit and it cannot be rejected *in limine*.

4. Heard, Mr.B.Ramamoorthy, the learned counsel for the petitioner, and M/s.R.Poornima, the learned counsel for the first respondent.

5. Admittedly, the first respondent when he was minor, through his next guardian i.e. his mother filed suit for partition in respect of the very same property in OS.No.25 of 2006 on the file of the District Munsif Court, Hosur. While pending suit, his mother filed affidavit seeking permission to withdraw the suit for the reason that the mother was settled outside the court. Though she filed affidavit seeking permission for the reason that they have settled the issues outside the court, no memorandum of compromise was entered between them by allotting some share or cash in favour of the first respondent's mother. After attainment of majority, the first respondent filed the present suit for partition adding all the subsequent purchasers as parties in the suit. According to the petitioner herein, the suit was filed by the first respondent through his mother and she also filed suit in OS.No.76 of 2006 for partition, in which by the judgment and decree dated 06.02.2012, she was allotted share in the suit property.

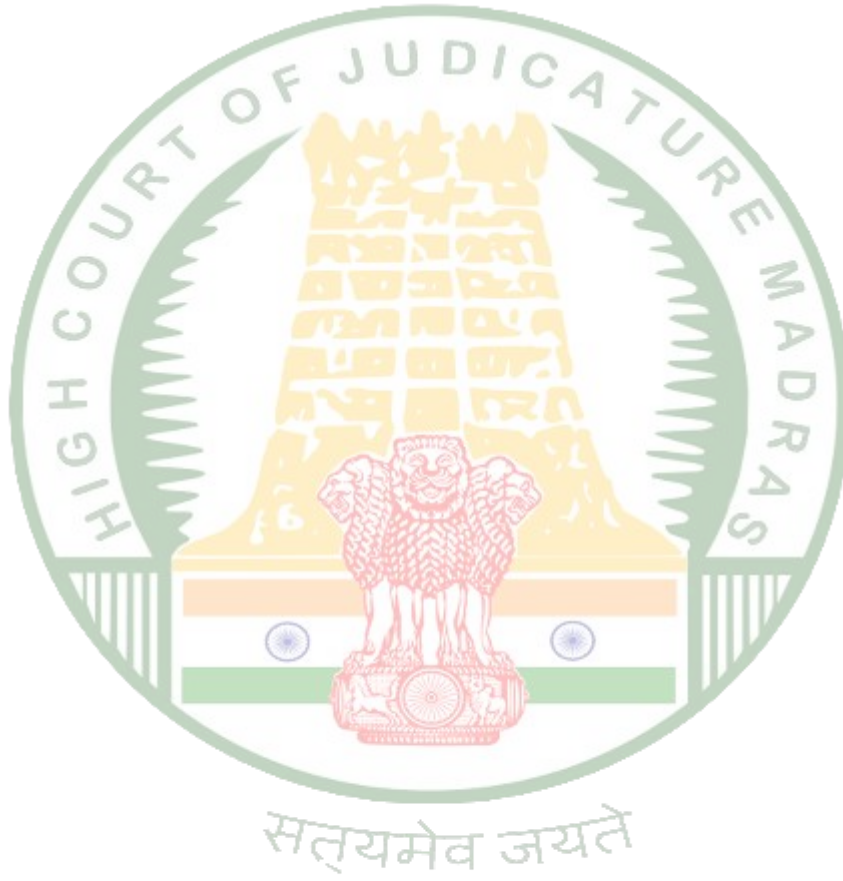
6. The learned counsel for the petitioner contended that the present suit is not at all maintainable as against the petitioner herein. Admittedly, in the suit filed by the petitioner herein, the first respondent was not a party. Therefore, now the first respondent filed the petition to include the prayer of declaration declaring that the judgment and decree obtained in OS.No.76 of 2006 as null and void and it is pending. Therefore, there are triable issues in the present suit and it cannot be said that it is hit by *res judicata*. Therefore, this Court finds no merits in the civil revision petition.

7. Accordingly, this civil revision petition is dismissed. However, the court below is directed to dispose of the suit in OS.No.93 of 2015 within a period of nine months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. No order as to costs.

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Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No



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C.R.P.(P.D).No.3083 of 2018

G.K.ILANTHIRAIYAN,J.

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To

The Principal District Court,
Krishnagiri.



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