

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

**CRP (PD).No.4020 of 2018
and
C.M.P.No.22255 of 2018**

Samiappan (dead)

1. S.Natarajan

2. S.Udhayakumar

... Petitioners

Vs.

1. Pazhanathal

2. N.Palanisamy

3. N.Balasubramaniam

4. N.Sulochana

5. N.Ambika

6. Yuvaraj

7. Lakshmi

8. Subbulakshmi

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to allow the above Civil Revision Petition by setting aside the fair and decretal order dated 25.06.2018 passed in I.A.No.709 of 2018 in O.S.No.37 of 2007 on the file of the District Munsif Court, Avinashi.

For Petitioners : Mr.Govi Ganesh K.

For Respondents : Mr.P.V.Ramachandran (for R-1)
: Notice Served (No Appearance)
(for R2 to R5)

ORDER

This Civil Revision Petition is filed against the fair and decretal order passed in I.A.No.709 of 2018 in O.S.No.37 of 2007 dated 25.06.2018 on the file of the learned District Munsif, Avinashi, thereby partly allowing the petition seeking amendment of plaint.

2. The petitioners are the plaintiffs and the respondents are the defendants. Originally the deceased/first plaintiff filed the suit for partition, in which the wife of deceased/first plaintiff was arrayed as eighth defendant. The eighth defendant born along with three brothers. The defendants 1 to 4 are the legal heirs of one brother and the defendants 5 to 7 are the legal heirs of the another brother. The another brother's whereabouts was not

known and he had no issues. While pending the suit, the deceased first plaintiff died and the plaintiffs 2 and 3 were impleaded as plaintiffs. At the same time, the eighth defendant filed a petition in I.A.No.518 of 2018 to transpose herself as 4th plaintiff in the suit. The said petition was allowed by an order dated 19.04.2018. Thereafter, the petitioners herein filed a petition seeking following amendment in the plaint.

- “1. In the docket sheet, short cause title and long cause title after the name of the 3rd plaintiff add 4) Subbulakshmi.*
- 2. In the long cause title after the address of the 3rd plaintiff add 4) Subbulakshmi wife of Samiappan, Hindu aged 58 years residing at Appar Kadu, Murugampalayam, Puddhupalahyam Village, Avinashi Taluk.*
- 3. In the plaint where ever in the word Subbulakshmi comes add 4th plaintiff.*
- 4. In the body of the plaint after para V-D add V-E) The plaintiffs submit that as per the final decree passed in I.A.No.141/1970 in O.S.No.681 of 1967 on the file of District Munsif Court, Tiruppur. The 4th plaintiff had become entitled to common 1/4th share in the suit property and she was in joint possession and enjoyment of the property along with her*

brothers. On 26.07.2006 she executed a registered settlement deed in favour of her husband who is the 1st plaintiff in the suit. He died subsequent to filing of the suit, the 4th plaintiff was originally the 8th defendant in the suit. After the death of 1st plaintiff she had transposed as the 4th plaintiff in the suit. The 4th plaintiff as a legal heir of her mother become entitled to 1/4th share in the suit property as per the aforesaid final decree. In any event this Court comes to the conclusion that the settlement deed executed by the 4th plaintiff in favour of her husband who is the 1st plaintiff on 26.07.2006 is not valid, in the alternative the 4th plaintiff is entitled for the partition of the suit property into 4 equal shares and for allotment of one such share to her.

5. In the details of valuation after the last sentence add 'value for the relief of alternative relief.'

Total value of the property Rs.3,60,000/-

Value of the 4th plaintiff's 1/4th share is Rs.90,000/-

The plaintiffs and the defendants are being co-owners deemed to be joint possession of the suit property.

A fixed court fee of Rs.500/- is paid under Section 37(2) TNCF Act 14 of 1995 as amended Act by 6 of 2017.

The Court fee paid of Rs.500/- already on the main relief.

6. In para VIII of the plaint in the prayer column after 1st

prayer add or in alternative passing preliminary decree for partition of the suti property into 4 equal shares and to allot one such share to the 4th plaintiff and to put her in separate possession of the share so allotted to her.”

3. The case of the petitioners is that after transposing the eighth defendant as fourth plaintiff in the suit, as per the final decree passed in I.A.No.141 of 1970 in O.S.No.681 of 1967, she is entitled to have 1/4th share in the suit property. The deceased first plaintiff filed the suit on the strength of the settlement deed executed by his wife viz., the fourth plaintiff dated 26.07.2006. Therefore, the petitioners filed a petition seeking amendment on the ground that if the settlement deed dated 26.07.2006 is not valid and they asked for alternative prayer that the fourth plaintiff is entitled to have 1/4th share in the suit property. However, the Court below partly allowed the petition for the reason that when the eighth defendant filed a petition to transpose herself as fourth plaintiff and the same was allowed and she did not ask for any more amendments as asked by the petitioners herein. Further, they can very well file separate petition for separate leave, if so advised.

4. As stated supra, when the eighth defendant transposed herself as fourth plaintiff, they sought for alternative prayer, since already the final decree passed in I.A.No.141 of 1970 in O.S.No.681 of 1967, in which she is entitled to have 1/4th share in the suit property. Therefore, the amendment sought for by the petitioners would not cause any prejudice to the respondents and also would not change the nature of the suit.

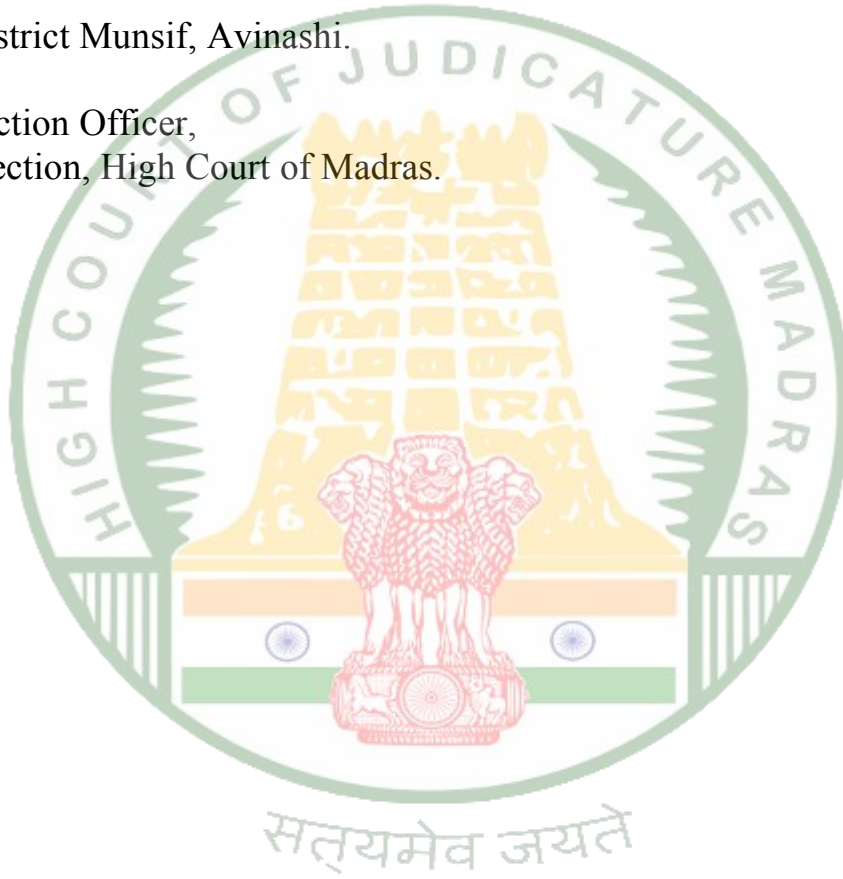
5. In view of the above discussion, this Civil Revision Petition is allowed and the order passed in I.A.No.709 of 2018 in O.S.No.37 of 2007 is hereby set aside. However, the suit is of the year 2007, the Court below is directed to dispose of the suit within a period of the six months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed. No costs.

29.07.2021

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

To

1. The District Munsif, Avinashi.
2. The Section Officer,
V.R. Section, High Court of Madras.



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G.K.ILANTHIRAIYAN,J.

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