



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.03.2021

CORAM :

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

CRP(MD)No.556 of 2021

and

CMP(MD)No.2994 of 2021

WEB COPY

1) D.Rajammal

2) D.Sivanadaraja

... Petitioners/Petitioners

vs.

M.Thangamani

... Respondent/Plaintiff

**Prayer** : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 08.02.2021 in I.A.No.3 of 2020 in O.S.No.1 of 2017 on the file of Principal District and Sessions Judge, Theni.

For Petitioners

: Mr.M.V.Venkatashesan

For Respondent

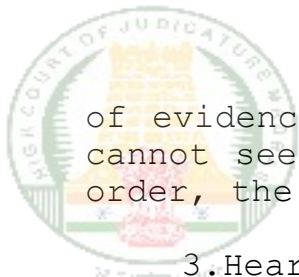
: Mr.V.Ravi for

Mr.A.Senthilkumar

### **ORDER**

This revision petition has been filed against the fair and decreetal order dated 08.02.2021 in I.A.No.3 of 2020 in O.S.No.1 of 2017 on the file of Principal District and Sessions Judge, Theni.

2.The respondent/plaintiff filed the above suit against the revision petitioners/defendants for partition. Pending suit, the petitioners/defendants filed I.A.No.3/2020 under Order 14 Rule 5 CPC, to frame new issue and to delete some issues, stating that even before filing of the main suit, the respondent/plaintiff was informed through a reply notice that he has no right whatsoever in the suit property, and therefore, he ought to have sought the relief of declaration and the petitioners have categorically stated that the respondent/plaintiff is not in possession and enjoyment of the suit property and would also state that the respondent/plaintiff is only a Binamidar and therefore, necessary issue has to be framed in this regard. The further contention of the petitioners is that since there is no dispute in respect of the nature of the suit property, the issue as to whether the suit property is ancestral property or not has to be deleted and since necessary parties have not been impleaded, the issues that whether the suit is bad for non joinder of necessary party and whether the suit is bad for partial partition are to be framed and they would also state that the above issues are very much necessary for the fair disposal of the main suit. The respondent/plaintiff filed counter stating that after framing necessary issues and after recording both sides evidence, when the main case was posted for arguments, the present petition has been filed only to protract the proceedings. The Court below dismissed the present petition holding that long after the closure



of evidence when the suit is posted for arguments, the petitioners cannot seek for addition and deletion of issues. Against the said order, the present revision is filed.

3. Heard the learned counsel for the petitioners as well as the respondents.

4. Perusal of record shows that the petitioners/defendants have filed written statement and none of the contentions raised in the present petition, have been raised in the written statement. Perusal of record further shows that the plaintiff and the defendants together had jointly sold nearly 48 plots in the suit properties to various third parties which is admitted and it is also an admitted fact that the plaintiff has not claimed any share in respect of the properties sold to third parties and therefore, the petitioners' contention that the present petition is bad for non joinder of parties cannot be accepted. Perusal of record also shows that based on the issues framed by the trial Court, both the parties have let in evidence elaborately and when the main suit is posted for arguments, the present petition has been filed which is only to protract the proceedings and the learned Judge has dealt with each and every point raised by the petitioners elaborately and therefore, I do not find any infirmity in the order passed by the learned Judge.

5. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

The Principal District and Sessions Judge,  
Theni.

+1 CC to M/s.V.RAVI, Advocate ( SR-13864[F] dated 26/03/2021 )

CRP(MD)No.556 of 2021

DATED : 25.03.2021

SVN(CO)

KB(16.04.2021) 2P 3C