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C.R.P.No.863 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2022

CORAM

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

C.R.P.No.863 of 2017  
and C.M.P.No.4242 of 2017

1. Ayee Gounder (Died)
2. Rajammal
3. Vijayasamundeswari
4. Mahendran  
(P2 to P4 brought on record as  
LRs of the deceased sole petitioner  
viz., Ayee Gounder vide Court  
order dated 16.12.2022 made in  
C.M.P.No.21088 of 2021 in  
C.R.P.No.863 of 2017)

... Petitioners

Vs.

1. Ranganayaki
2. Santhakumari
3. Jothi Maheswari
4. Selvi
5. R.Vijayakumar  
(5<sup>th</sup> respondent is not a necessary  
party and hence given up)

... Respondents



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**Prayer :-** Civil Revision Petition filed under Article 227 of the Constitution of India, to strike of the plaint in O.S.No.518 of 2016 on the file of the learned District Judge, Coimbatore.

For Petitioners : Mr.A.E.Ravichandran

For Respondents

For R1 to R4 : Mr.V.Ayyapparaj  
For Mr.R.Bharathkumar

For R5 : Given up

### **ORDER**

The Civil Revision Petition has been filed to strike of the plaint in O.S.No.518 of 2016 on the file of the learned District Judge, Coimbatore.

2. The deceased first petitioner is the first defendant in the suit filed by the respondents 1 to 4 herein in O.S.No.518 of 2016, for partition in respect of the suit property. The fifth respondent is the second defendant. The case of the respondents 1 to 4 is that originally the property admeasuring 7.16 acres comprised in S.F.No.809 situated at Gudalur Village was jointly purchased by the deceased first petitioner and his father viz., Ramasamy Gounder and another brother viz., Rangasamy, by the sale



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deeds dated 10.08.1967 and 19.09.1967 registered vide document Nos. 813 of 1967 & 1000 of 1967 on the file of the Sub Registrar, Perianaickenpalayam. As per the sale deed, the deceased first petitioner and his father Ramasamy Gounder and his another brother Rangasamy Gounder are entitled to have 1/3 share viz., 2.39 acres each. While being so, the said Ramasamy Gounder died on 19.05.1980 leaving behind four issues i.e., three sons and one daughter, viz., Rangasamy Gounder, Ayee Gounder, Maruthachalam and Marathal. On 18.07.2003, the said Rangasamy Gounder also died leaving being the respondents 1 to 5 as his legal heirs.

3. Thereafter, the said Maruthachalam and Marathal had executed a release deed dated 12.08.2005 and released their 2/4<sup>th</sup> share over the 1/3<sup>rd</sup> share of their deceased father Ramasamy Gounder, in favour of the fifth respondent herein. Thereafter, the respondents 1 to 4 viz., mother and sister of the fifth respondent had executed release deed dated 07.11.2005 in favour of the fifth respondent herein thereby relinquished their share in respect of the 1/3<sup>rd</sup> share which was allotted in favour of late Rangasamy Gounder.



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4. Further, the case of the respondents 1 to 4 is that the release deed dated 07.11.2005 was never came into force and therefore, it may be ignored. Further, the property which was released by the other two legal heirs of the deceased Ramasamy Gounder to an extend of 1.18 acres was very much available with the deceased first petitioner and the fifth respondent herein. Though the respondents 1 to 4 had executed release deed dated 07.11.2005 insofar as their 1/3<sup>th</sup> share is concerned, they are entitled to have share in the property which was released by the other two legal heirs in favour of the deceased first petitioner and the fifth respondent herein.

5. Though, after the released deed executed by the respondents 1 to 4 herein, the deceased petitioner and the fifth respondent had partitioned the property as 1/2 share each, the respondents 1 to 4 are not parties to the said partition deed, in respect of the property which was released in favour of the deceased first petitioner and the fifth respondent herein by the other two legal heirs of the deceased Ramasamy Gounder. Therefore, the respondents 1 to 4 filed suit for partition with the above cause of action. However, the deceased petitioner filed this Civil Revision Petition to strike



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of the plaint for the reason that the respondents 1 to 4 have released their share and they have no cause of action to file the suit.

6. Heard Mr.A.E.Ravichandran, learned counsel appearing for the petitioners and Mr.V.Ayyapparaja, learned counsel appearing for the respondents 1 to 4.

7. The respondents 1 to 4 filed suit in O.S.No.518 of 2016 for partition as against the deceased first petitioner and the fifth respondent. The first petitioner filed this Civil Revision Petition to strike of the plaint on the ground that there is no cause of action in the suit and the suit itself is abuse of process of law and it cannot be considered. However, on perusal of the plaint there are several issues which have to be decided by the trial Court by due trial. This Court finds no ground to reject the plaint. However, the trial Court is directed to dispose the suit within a period of twelve months from the date of receipt of a copy of this Order.



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WEB COPY 8. Accordingly, this Civil Revision Petition stands dismissed.

Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

22.12.2022

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts

To

1. The District Judge,  
Coimbatore.



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**G.K.ILANTHIRAIYAN, J.**

rts

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