



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2022

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P. (PD) (MD) .Nos.2004 and 2005 of 2017
and
C.M.P. (MD) .No.10072 of 2017

Ramachandran

... Petitioner in both C.R.Ps.

vs.

1.Mrs.Dhanalakshmi
2.Nazima Begum
3.Abdul Gafoor

... Respondents in both C.R.Ps.

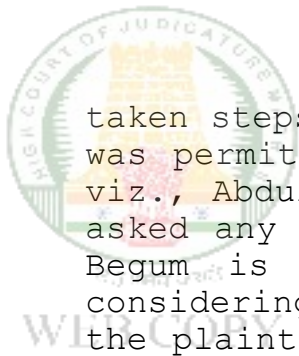
PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 21.09.2017 passed in I.A.Nos.242 and 243 of 2017 in O.S.No.83 of 2009 by the District Munsif cum Judicial Magistrate Court, Natham.

For Petitioner	: Mr.S.Anand Chandrasekar for M/s. Sarvabhauman Associates
For R1	: Mr.PT.S.Narendravasan R2 Ex-parte
For R3	: No appearance

C O M M O N O R D E R

These Civil Revision Petitions have been filed against the order passed by the District Munsif cum Judicial Magistrate Court, Natham in I.A.Nos.242 and 243 of 2017 in O.S.No.83 of 2009, dated 21.09.2017.

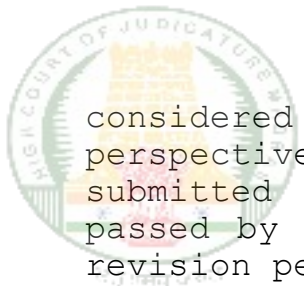
2. The above I.A.Nos.242 and 243 of 2017 were filed to re-open and recall D.W.2 for cross-examination. The Court below, after considering the submissions of both the counsel, allowed the applications. Aggrieved over the said orders, the revision petitioner herein filed the present revision petitions stating that the Court below without considering the very material fact relating to the knowledge about the legal heirs of Kathija Beevi and Mohammed Ibrahim Rowther viz., Bajira Begum, allowed the applications. At the time of filing the suit itself, the plaintiff well aware of the fact that Bajira Begum was passed away. A perusal of Ex.P6 clearly shows that Bajira Begum was passed away at the time of filing the suit. When such being the position, the plaintiff supposed to have



taken steps to implead the LR's. of Bajira Begum. Even the plaintiff was permitted to cross-examine one of the LR's. of Mohammed Ibrahim viz., Abdul Gafoor, who is the third respondent herein, she was not asked any question with regard to the LR's. of Bajira Begum. Bajira Begum is none other than the sister of D3 and D1. Without considering these vital fact, after closing the evidences of both the plaintiff as well as the defendants' side, now at the stage of argument she has come forward with these applications to re-open and recall D.W.2 for cross-examination only with *mala fide* intention to drag on the proceedings. Further, all these facts have not been considered in a proper perspective and therefore, the order passed by the Court below is liable to be set aside.

3. Learned counsel appearing for the petitioner further contended that according to the plaintiff, there was a settlement between Mohammed Ibrahim and her daughter Nazima Begum. Challenging the said settlement, a suit was filed by the revision petitioner herein and ultimately the Court below held that the settlement was not valid. Then only the plaintiff has filed the present suit for the purpose of partition. When the petitioner/plaintiff filed a suit for partition, she supposed to have brought all the LR's. of Mohammed Ibrahim and Kathija Beevi into the records. Therefore, the suit is also liable to be dismissed on this ground. But, with *mala fide* intention to fill up the gaps, which were left out at the time of filing the suit, now she has come forward with the present applications. This aspect also not considered by the Court below and hence the order of the Court below is suffered with infirmities. Therefore, he submitted that the orders of the Court below are liable to be set aside.

4. On the other hand, Mr.PT.S.Narendravasan, learned counsel appearing for the first respondent submitted that it is true that there was a settlement executed by Mohammed Ibrahim in favour of Nazima Begum, who is the second respondent herein. However, the settlement was declared as not a valid by the Court below and ultimately it was confirmed in S.A.No.172 of 2004. Kathija Beevi is the wife of Mohammed Ibrahim and the Kathija Beevi having three LR's. viz., Nazima Begum, Abdul Gafoor and Bajira Begum. These are all admitted facts, the suit was filed for partition by one Dhanalakshmi showing Nazima Begum, Kathija Beevi, Abdul Gafoor and Ramachandran as defendants. Since Bajira Begum was passed away, she was not impleaded as one of the defendants. At the time of cross-examination, D.W.2, who is the third defendant has confirmed the above position of the LR's. But however, with regard to the particulars of the LR's. have not been deposed by D.W.1. In this regard, the first respondent wants to cross - examine D.W.2. It is just and necessary to cross-examine D.W.2. In the event, if any LR's. are available for Bajira Begum after her marriage, then the suit is liable to be dismissed for non-joinder of the parties even the Court on its own motion. Therefore, for all these reasons, she has filed an application for re-open and recall D.W.2 and the Court below also



considered the plea of the first respondent/plaintiff in a proper perspective and allowed the applications. Therefore, he has submitted that there is no interference required in the orders passed by the Court below and prayed for dismissal of the present revision petitions.

WEB COPY

5. Heard the submission of the learned counsel for the petitioner as well as the learned counsel for the first respondent and perused the materials available on record.

6. I have given a due consideration for the submissions made by the learned counsel for the petitioner as well as the contesting first respondent. The property was initially belongs to one Mohammed Ibrahim. The suit was filed after the death of Mohammed Ibrahim, wife of Mohamed Ibrahim viz., Kathija Beevi was impleaded in the suit as the second defendant. After filing the suit, she was passed away. At the same time, one of the LRs. of Kathija Beevi viz., Bajira Begum also passed away. Ex.P6 reveals the death of Bajira Begum and D.W.2, in his deposition stated that the LRs. of the Kathija Beevi are Nazima Begum, Abdul Gafoor and Bajira Begum. At the time of filing the suit itself, Bajira Begum was passed away and she was not impleaded as a party to the suit. But however, it is relevant to implead the LRs. of the Bajira Begum in the present suit for partition and certainly the LRs. of Bajira Begum are entitled for the share. The written statement of Abdul Gafoor not at all revealed anything about the LRs. of Bajira Begum. The written statement of D.W.4 also did not reveal anything. Further, it is also not within the knowledge of the first respondent.

7. In such circumstances, when the plaintiff cross-examined D.W.2, he has stated that Bajira Begum is one of the LRs. of Kathija Beevi. It is not known whether Bajira Begum got married or not and also not known about her LRs. D.W.2 also did not speak anything about it. In these circumstances, this Court is of the considered view that for the purpose of confirming whether Bajira Begum is having LRs. or not, only D.W.2 is the appropriate person to speak about this aspect. Furthermore, in the written statement, nowhere it has been stated that the suit is liable to be dismissed for non-joinder of parties. Under such circumstances, this Court cannot construe that the first respondent filed a petition to re-open and recall D.W.2 for cross-examination to fill up the gaps or further improve her case. If there is any LRs. of Bajira Begum, certainly they are entitled for share in the property of the mother and they are the necessary parties. All these aspects have been well considered on the facts as well as the legal decisions by the Court below and passed the reasoned order and this Court recognise and respect the order passed by the Court below. Accordingly, there is no interference required and the Civil Revision Petitions are liable to be dismissed.

<https://hcservices.courts.gov.in/hcservices> result, these Civil Revision Petitions are dismissed.



No costs. Consequently, connected Miscellaneous Petition is closed.
Sd/-

Assistant Registrar (Records)

// True Copy //

WEB COPY

/ /2022

Sub Assistant Registrar(CS)

akv

To

The District Munsif cum Judicial Magistrate Court,
Natham.

+1 CC to M/s.SARVABHAUMAN ASSOCIATES, Advocate (SR-14741[F] dated
28/03/2022)

+1 CC to M/s.PT.S.NARENDRAVASAN, Advocate (SR-15160[F] dated
29/03/2022)

C.R.P. (PD) (MD) .Nos.2004 and 2005 of 2017
25.03.2022

NSN(CO)

KB(04.04.2022) 4P 4C