



WEB COPY



C.R.P(PD)No.935 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2023

CORAM

THE HONOURABLE Mr.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P(PD)No.935 of 2020

1.Palani
2.Shanthi
3.Dhakshyani

... Petitioners

Vs

1.Venkatesan
Ravikumar (Died)
2.Shanmugam
3.A.Selvakumar
4.A.Srinivasan
5.A.Elumalai
6.S.Kokila

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 26.11.2019 passed by the Court of the Subordinate Judge at Tiruvallur in I.A.No.1 of 2019 in O.S.No.111 of 2011.

For Petitioners	:	Mr.T.Sundar Rajan
For Respondents 1, 3 to 6	:	Ms.O.Ashwini Prakash
For Respondent 2	:	No Appearance.



C.R.P(PD)No.935 of 2020

ORDER

WEB COPY

The Defendants in O.S.No.111 of 2011 on the file of the learned Subordinate Judge, Thiruvallur, are the Revision Petitioners.

2. It is the contention of the learned counsel for the Revision Petitioners that Respondent herein as Plaintiff had filed the suit for partition.

3.The Learned Counsel for the Revision Petitioners invited the attention of this Court to the prayer made in the plaint, which reads as follows:

“i) To pass a preliminary decree of partition and separate possession of plaintiff's 1/4th share in the schedule mentioned properties by metes and bounds.

ii) To pass a final decree by appointing an Advocate Commissioner to divide the schedule mentioned properties in to four equal shares by metes and bounds and allot one such share to the plaintiff.

iii) For a permanent injunction restraining the defendants and their agents from alienating the property till partition.”

4. While so, the Petitioners herein as Defendants had filed a written



C.R.P(PD)No.935 of 2020

statement disputing each and every contentions of the Plaintiff in the plaint averments. Issues were framed and the trial proceeded. At the stage of arguments, the Plaintiff had filed an application I.A.No.1 of 2018 in O.S.No.111 of 2011 to implead the sisters as Defendants in the suit.

5. It is the contention of the learned Counsel for the Revision Petitioners that the Defendants in the written statement had clearly stated that the property for which the suit had been instituted, was a self-acquired property of the father of the Plaintiff and Defendants. The father of the plaintiff and Defendants had executed a settlement deed in favour of the Defendants. The Plaintiff had not challenged the settlement deed, but had filed the suit for partition. In the suit for partition, in the plaint, it is clearly stated that the sisters of the Plaintiff and Defendants were married off with the resources of the joint family. Therefore, they are not parties to the partition suit. While so, after closure of evidence of both the parties and at the stage of arguments, the application was filed, that too belatedly. It is the case of the Revision Petitioners as Defendants before the trial Court that in spite of the vehement objection by the Defendants in the suit as



C.R.P(PD)No.935 of 2020

Respondents in I.A.No.1 of 2019 in O.S.No.111 of 2011, the learned Subordinate Judge, Thiruvallur had allowed the application, as per the impugned order dated 26.11.2019. Aggrieved by the same, the Civil Revision Petition had been filed by the Defendants in O.S.No.111 of 2011, the Respondents in I.A.No.1 of 2019. Therefore, the learned Counsel for the Revision Petitioners seeks to set aside the order of the learned Subordinate Judge, Thiruvallur by invoking the powers of this Court under Article 227 of Constitution of India.

6. The learned Counsel for the 1st Respondent / Plaintiff before the trial Court submitted that for complete adjudication, the sisters have to be impleaded. If the sisters are impleaded, the share of the Plaintiff himself will get reduced.

7. The subject matter raised by the Revision Petitioners is to be decided only after impleading all the sisters and after complete adjudication of the dispute and during conclusion of trial, it cannot be done. Therefore, the learned



C.R.P(PD)No.935 of 2020

Counsel for the Respondents sought dismissal of the C.R.P.

WEB COPY

8. It is the further contention of the learned Counsel for the respondents that the learned Subordinate Judge, Thiruvallur had imposed heavy costs on the Petitioner therein for having filed the application belatedly. Therefore, it does not warrant any interference by this Court.

9. Heard the rival submissions on both sides and perused the materials available on record.

10. On perusal of the plaint, written statement and the impugned order passed by the learned Subordinate Judge, Thiruvallur, it is found that the contentions of the learned counsel for the Revision Petitioners/Defendants in the suit, are found to be reasonable and acceptable. They had not chosen to implead the sisters by claiming the daughters of Senkazhani, who have been married off in the years 1967 and 1972 respectively from the income of the joint family. Considering the fact that the settlement deed had not been challenged



C.R.P(PD)No.935 of 2020

WEB COPY

in the plaint, the suit being for partition, after recording of evidence both the parties and the conclusion stage of the trial, at the stage of arguments, the Plaintiff seeks to implead the sisters, who are left out by the Plaintiff himself. The same is not acceptable, in the light of the Code of Civil Procedure (Amendment) Act 2002, wherein, the amendment cannot be allowed, once the trial had commenced. Here, the suit is at the stage of arguments. Therefore, the objections by the learned Counsel for the Defendants before the trial Court were found to be justified. Still, the learned Subordinate Judge, Thiruvallur has exercised her discretion violating the principles under the Code (Code of Civil Procedure (Amendment) Act 2002). Therefore, this Court exercising its discretion under Article 227 of the Constitution of India, has to interfere with the impugned order passed by the learned Subordinate Judge, Thiruvallur. Accordingly, the impugned order passed by the learned Subordinate Judge, Thiruvallur, is set aside and the Civil Revision Petition is allowed. The petition to implead the sisters of the Plaintiff and defendants in I.A.No.1 of 2019 in O.S.No.111 of 2011 dated 26.11.2019 is set aside. The learned Subordinate Judge, Thiruvallur is directed to proceed with the trial and dispose



C.R.P(PD)No.935 of 2020

WEB COPY

of the same within a period of two weeks from the date of receipt of a copy of this order. No costs.

08.03.2023

Index : Yes/No

Speaking order/non-speaking order

Neutral Citation: Yes/no

srn

To

1. The Subordinate Judge, Tiruvallur.
2. The Section Officer, V.R. Section, High Court, Madras.



WEB COPY



C.R.P(PD)No.935 of 2020

SATHI KUMAR SUKUMARA KURUP, J.

Srn

C.R.P(PD)No.935 of 2020

08.03.2023