



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.07.2023

CORAM

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.3283 of 2019

and

C.M.P.No.21827 of 2019

T.Shanmuga Sundaram

...Petitioner

Vs.

- 1.T.K.Mohan
- 2.M.Parimala
- 3.M.Sakthivel
- 4.T.K.Ravichandran
- 5.V.Arul Pravin
- 6.Kasthuri
- 7.G.Ramesh Babu
- 8.G.Suresh Babu
- 9.G.Sabitha Parthiban
- 10.T.Manoharan
- 11.Malathi
- 12.Parvatham
- 13.Pachiammal
- 14.Indian Overseas Bank,
Mahalingapuram,
Chennai – 600 034.
- 15.Priya.

...Respondents



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Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to prefer this Memorandum of Grounds of Civil Revision Petition against the Docket order dated 26.11.2018 passed in O.S.No.103 of 2008 of the Additional District Court, Mettur, Salem.

For Petitioner	:	Mr.T.R.Rajaraman for M/s.P.Veena Suresh
For Respondents	:	
For R14	:	M/s.V.Rajeswari
For R1	:	Mr.C.Ramesh
For R4,R8,R9,R10,R14,R15	:	-No Appearance-
For R2,3,5,6,7,11,12,13,16	:	-Not Ready in Notice-

ORDER

This is a suit for partition. The first defendant filed a written statement that was adopted by defendant Nos.2,3,4 and 6. Pending the suit, first defendant passed away and the defendant Nos.2,5 and 6 being parties to the suit already, the other legal heirs, namely, defendant Nos.16,17 and 18 were impleaded. The application was allowed on 30.03.2010.

2.The Trial Court has noted that the notice in the impleading application was not served on defendant Nos.16 to 18 prior to allowing the petition. Similarly, the application filed consequent to the impleading of parties in I.A.No.450 of 2010 was also allowed without notice to defendant



Nos.16 to 18.

3.After being impleaded, summons were issued to them on 16.06.2011. Defendant Nos.17 and 18 remained *ex-parte*. Defendant No.16 entered appearance and filed his written statement. I have to note that a legal representative cannot have a superior right than the original defendant. Therefore, the written statement filed by defendant No.16 could not have exceeded the stand taken by D1. However, the written statement of defendant No.16 was taken on file but no additional issues were framed.

4.On 18.01.2018 defendant No.2 filed a written statement which was adopted by defendant Nos.3,4 and 6. However, even at that stage, the written statement filed by defendant No.16 was not taken into consideration for framing of issues.

5.In the meanwhile, the plaintiff was examined as P.W.1. Taking note of the fact that the written statement of defendant No.16 was not taken into consideration, at the time of framing of issues, the learned Judge has ordered a *de-novo* trial.

6.Aggrieved by the same, the present revision has been presented. Under the Code, a court has to frame issues on the date of first hearing of



the suit. However, it does not bar a Court from framing additional issues at any time prior to rendering the judgment.

7.The mistake committed by the court in the present case is not in issuing the summons to defendant No.16 to 18 in the impleading as well as consequential amendment petitions but also not taking into consideration the written statement filed by defendant No.16 at the time of framing of the issues. This anomaly has been set right by the impugned order.

8. The Learned Trial Judge has exercised his discretion which I do not want to interfere under Article 227 of the Constitution of India because at best it is a procedural error, which has been rectified by the court. The Court will take into consideration, the observations made above, at the time of disposal of I.A.No.195 of 2018 which has been filed to strike out the defense of defendant Nos.2,3,4 and 6.

9. With the above observations the CRP is dismissed. No costs. Connected Miscellaneous Petition is closed.

19.07.2023



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Index : Yes/No
Neutral Citation Case : Yes/No

nst

To:

The Additional District Court, Mettur, Salem.

V. LAKSHMINARAYANAN.J.,

nst

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