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C.R.P.No.2028 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2023

CORAM

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

C.R.P.No.2028 of 2016
and C.M.P.No.10576 of 2016

1. Annathanam
2. Balan @ Kanamalai
3. Arumugam

... Petitioners

Vs.

1. Paramasivam
2. Manickam
3. Kasinathan
4. Kumar
Karunanidhi (died)
5. Akilandam
6. Kullammal
7. Anjalai
8. Suganthi
9. Gandhimathi

... Respondents

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 11.12.2014 passed in I.A.No.6 of 2012 in O.S.No.68 of 2009 on the file of the Additional Sub Court, Virudhachalam.



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For Petitioners : Ms.R.Meenal

For Respondents : No appearance

ORDER

The Civil Revision Petition has been filed as against the order dated 11.12.2014 passed by the learned Additional Subordinate Judge, Virudhachalam, in I.A.No.6 of 2012 in O.S.No.68 of 2009, thereby dismissing the petition filed by the petitioners to transpose themselves as plaintiffs.

2. The first respondent herein filed suit for partition claiming 1/3rd share in the suit property. The petitioners are defendants 1 to 3 in the suit. The petitioners filed written statement and admitted the claim of the first respondent and also seeking 1/3rd share in their favour. However, the other defendants contested the suit and claimed title of the suit property in their favour.

3. The trial commenced and the second petitioner herein filed proof affidavit stating that the first respondent colluded with other



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defendants and obstructed from getting witness box for cross-examination.

He also openly challenged that he is not going to continue the suit.

Therefore, the petitioners are being the defendants 1 to 3 filed an application in I.A.No.6 of 2012, to transpose themselves as plaintiffs 1 to 3 in the suit. Though, the trial Court stated all the averments and facts, finally dismissed the petition without any reason.

4. Heard Ms.R.Meenal, learned counsel appearing for the petitioners. Though notices served to the respondents, no one is appearing on behalf of the respondents in person or through counsel.

5. In the suit for partition and all the parties are plaintiffs. Therefore, they can very well transpose themselves as plaintiff in the suit for partition that too when the first respondent colluded with other contesting defendants and had no interest to proceed the suit further. That apart, there is absolutely no prejudice would be caused to the first respondent, if the petitioners herein are transposed as plaintiffs in the suit. Therefore, the order passed by the trial Court is liable to be set aside.



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6. Accordingly, the order dated 11.12.2014 passed by the learned Additional Subordinate Judge, Virudhachalam, in I.A.No.6 of 2012 in O.S.No.68 of 2009, is hereby set aside and the Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

06.02.2023

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts



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1. The Additional Sub Court,
Virudhachalam.



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G.K.ILANTHIRAIYAN, J.

rts

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