



C.R.P.Nos.828 of 2017 & 4771 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2023

CORAM

THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.828 of 2017
and C.M.P.No.4070 of 2017
and C.R.P.No.4771 of 2023
and C.M.P.No.28320 of 2023

C.R.P.No.828 of 2017:

1.Unnamalai
2.M.Jambulingam
3.M.Dharmalingam
4.Parameswari
5.Maheswari
6.Jambugeshwari ...Petitioners/Respondents 3, 5, 6,7, 8 & 12
/Defendants 3, 5, 6, 7, 8 & 12

Vs.

1.Rajam
2.Vijaya ...Respondents/Petitioners 1 and 2
/Plaintiffs 1 and 2
3.Dharmaraj
4.M.Nagalingam
5.Rajini
6.M.Manikandan
7.Aarthi ...Respondents/ Respondents 2, 4, 9, 10 & 11
/Defendants 2, 4, 9, 10 & 11



C.R.P.Nos.828 of 2017 & 4771 of 2023

C.R.P.No.4771 of 2023:

Muthiah (died)

1.Unnamalai

2.M.Jambulingam

3.M.Dharmalingam

4.Parameswari

5.Maheswari

6.Jambugheshwari

...Petitioners 1 to 6/Third Party

Vs.

1.Rajam

...1st Respondent/1st Petitioner

2.Vijaya

...2nd Respondent/1st Petitioner

3.Dharmaraj

...3rd Respondent/2nd Respondent

Prayer in C.R.P.No.828 of 2017: Civil Revision Petition filed under Article 227 of the Constitution of India as against the Order and Decretal Order dated 07.11.2026 in I.A.No.152 of 2015 in O.S.No.334 of 2004 on the file of the learned District Munsif, Valangaiman.

Prayer in C.R.P.No.4771 of 2023: Civil Revision Petition filed under Article 227 of the Constitution of India as against the Order and Decretal Order dated 31.08.2015 in I.A.No.69 of 2015 in O.S.No.334 of 2004 on the file of the learned District Munsif -cum- Judicial Magistrate, Valangaiman.



C.R.P.Nos.828 of 2017 & 4771 of 2023

For Petitioners : Mr.M.Renton
in both petitions

For Respondents : Mr.S.Uma Maheswaran
for R4, R6 and R7
in C.R.P.No.828 of 2017

R5 - Not ready in notice

No appearance for R1 to R3
in both petitions

COMMON ORDER

One O.P.Muthiah Pillai died on 21.05.2021. He was the 1st defendant in the Original Suit. The suit was filed for declaration and for accounting in partnership firm. Originally, the suit was dismissed. On appeal, it was decreed. Thereafter, an application was taken out for passing of Final Decree. Pending the Final Decree application, O.P.Muthiah Pillai passed away. Therefore, to implead the legal representatives of the deceased, an application was taken up in I.A.No.69 of 2015. In the said application, the argument of the revision petitioner was that O.P.Muthiah Pillai



C.R.P.Nos.828 of 2017 & 4771 of 2023

WEB COPY

had executed a Will bequeathing the property denying the shares to the 4th and 5th petitioners. However, in the LR petition filed before the Court they were not shown as parties.

2.Heard Mr.M.Renton, learned counsel for the petitioners and Mr.S.Uma Maheswaran, learned counsel for the respondents 4, 6 and 7.

3.Though the plaintiffs/petitioners have been served, there was no representation either in person or through pleader.

4.The cause for this revision is the death of Muthiah Pillai. The relationship between the parties is not in dispute. The only dispute is that Parameswari and Maheswari projected a Will to deny the shares of the other legal representatives. Whether the Will is true and genuine, would have to be found out only in



C.R.P.Nos.828 of 2017 & 4771 of 2023

C.M.A.No.648 of 2023, now pending before the Permanent Bench
at Madurai.

5.Insofar as the final decree proceedings are concerned, any person who represents the estate of O.P.Muthiah Pillai is a legal representative. The right of the parties claiming through the Will has been saved by the learned District Munsif, in and by way of her order, dated 31.08.2015. The legal representatives should have been shown as parties and notice should have been sent to them. However, since no prejudice is caused to them, failure to follow the said procedure is not fatal. The Procedure is only a hand-maiden of justice and therefore, since no prejudice is caused the impleading of all the parties is not wrong. If Parameswari and Maheswari prove the Will as true, the others will automatically stand deleted, as the order of the probate will be binding on them.

6.Mr.M.Renton, learned counsel appearing for the petitioners



C.R.P.Nos.828 of 2017 & 4771 of 2023

WEB COPY

would submit that on the basis of the order passed in M.P.No.1 of 2011 in S.A.No.1481 of 2011 and C.M.P.No.5362 of 2017 dated 19.03.2012, the legal heirs of Muthiah Pillai other than Parameswari and Maheswari were deleted from the array as the parties. He would state that on the basis of the Civil Miscellaneous Petition, the parties were deleted from the array of the parties in the Final proceedings. He would state that they did not challenge the deletion and hence, they are not entitled to agitate the matter before the High Court.

7.This very argument was placed before me, while I was dealing with the Second Appeal in C.M.P.No.5622 2020. I rejected the argument and held that if the parties admittedly, who are the legal representatives, are impleaded the estate will be represented in full and any person representing the estate is a "legal representative" under Order 2(11) of the Code of Civil Procedure.



C.R.P.Nos.828 of 2017 & 4771 of 2023

WEB COPY

Therefore, I allowed the application on 27.03.2003. They were impleaded as parties to the appeal and the appeal was dismissed on 24.05.2023. Even in this revision, I will save the right of the petitioners 4 and 5, namely, Parameswari and Maheswari, to agitate their rights in the pending Civil Miscellaneous Appeal and if they succeed in convincing the Court that the Will executed by O.P.Muthiah Pillai is true and genuine, the others will automatically stand deleted.

With the above observations, both the Civil Revisions are disposed of. No Costs. Consequently, connected Miscellaneous Petitions are closed.

25.07.2023

Index	: Yes/No
Speaking Order	: Yes/No
Neutral Citation Case	: Yes/No
mps	



C.R.P.Nos.828 of 2017 & 4771 of 2023

To
WEB COPY

The District Munsif -cum- Judicial Magistrate,
Valangaiman.



WEB COPY



C.R.P.Nos.828 of 2017 & 4771 of 2023

V. LAKSHMINARAYANAN, J.

mps

C.R.P.No.828 of 2017
and C.M.P.No.4070 of 2017
and
C.R.P.No.4771 of 2023
and C.M.P.No.28320 of 2023

25.07.2023