



WEB COPY

CRP(NPD)No.3046



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

**C.R.P.(NPD)No.3046 of 2018
and C.M.P.No.17685 of 2018**

1.P.Saraswathi

2.P.Saroja

... Petitioners

Vs.

1.Nagammal
2.Subhashini
3.Visweswaran
4.Sureka
5.Mallaiyan
6.Govindaraj
7.Padmavathi

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 20.04.2018 in I.A.No.2 of 2018 in A.S.No.102 of 2014 on the file of the Additional District (Fast Track Court), Mettur.

For Petitioners : Mr.V.Sekar

For R7 : Mr.M.Mariyappan

For RR1, 2 & 4 : Mr.M.Sivakumar

For RR3, 5 & 6 : No appearance

ORDER



The revision is filed against an order passed by the learned Additional District Judge, Fast Track Court, Mettur, dated 20.04.2018, in I.A.No.2 of 2018 in A.S.No.102 of 2014.

2. The civil revision petitioners are the plaintiffs and the 1st respondent is the mother of the plaintiffs. The petitioners' father was one Perumal Naidu. He had two wives namely, Buduthiammal and Nagammal/1st respondent. The petitioners and the 1st defendant, one Mallaiyan, are the daughters and son of Perumal Naidu and Nagammal. One Pappammal is the daughter of Perumal Naidu and Buduthiammal. She was not added as a party to the suit. In a suit for partition, all the sharers must be impleaded as parties, otherwise, it could be fatal to the suit.

3. Despite a specific stand has been taken in the written statement, they were not impleaded as parties. That error was sought to be rectified by filing an application before the lower Appellate Court. The learned Judge came to a conclusion that the appeal has to be remanded as he did not find sufficient justification for dismissal of the suit by the trial Court. Having remanded the matter to the trial Court, he had dismissed the impleading application saying no fresh opportunity must be given to the party.

4. As I have already stated, in a suit for partition, all the co-sharers must be



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made as parties and if they are not made to do so, that might result in the dismissal of the suit. The Code of Civil Procedure is not a tool to punish the litigants, but it aids the Court to reach just conclusion. I enquired the learned counsel for the respondents if he is disputing the relationship. He does not deny the relationship as stated in the petition. When there is no dispute in the relationship, no prejudice would be caused to either parties by impleading the legal representatives of the deceased Perumal Naidu.

5. In fine,

(i) Civil Revision Petition stands allowed. The order passed by the learned Additional District Judge, Fast Track Court, Mettur, dated 20.04.2018, in I.A.No.2 of 2018 in A.S.No.102 of 2014 is set aside.

(ii) The matter having been remitted to the Sub Court, Mettur, the learned Subordinate Judge, Mettur, is requested to permit the plaintiffs to implead the proposed parties as defendants to the proceedings.

(iii) Mr.M.Sivakumar, learned counsel for the respondents 1, 2 & 4 would bring to my notice that the connected suit has been filed by the proposed parties in O.S.No.274 of 2013 on the file of the very same Court. Therefore, the learned Subordinate Judge, Mettur, shall try O.S.No.172 of 2011 along with O.S.No.274 of 2013 and pass a common judgment by taking them for joint trial.

(iv) The said proceedings shall be completed within a period of nine months



CRP(NPD)No.3046



from the date of receipt of a copy of this order. No costs. Consequently, connected
Miscellaneous Petition is closed.

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21.07.2023
(1/2)

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

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To

The Additional District Judge
(Fast Track Court), Mettur.

V.LAKSHMINARAYANAN,J.



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