



C.R.P.(MD)No.1151 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.04.2023

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.1151 of 2023

and

C.M.P.(MD)No.5502 of 2023

Joseph Bhawya

.. Petitioner

Versus

1.Mariya Nayaki

2.The State of Tamil Nadu,
Rep. by its District Collector,
Kanyakumari Collectorate,
Nagercoil Post,
Nagercoil Village,
Agastheeswaram Taluk,
Kanyakumari District.

3.The Assistant Engineer, W.R.D/P.W.D.,
Irrigation (Special Section),
Thucklay – 629 175,
Thucklay Post, Kalkulam Taluk,
Kanyakumari District.

4.The Tahsildar,
Kalkulam Taluk,
Thucklay Village,
Kalkulam Taluk,
Kanyakumari District.



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5.The Revenue Inspector,
Colachel Firka,
Colachel Post, Colachel Village,
Kalkulam Taluk,
Kanyakumari District.

6.The Village Administrative Officer,
Vellichanthai Village,
Vellichanthai Post,
Kalkulam Taluk,
Kanyakumari District.

.. Respondents

Prayer :- Petition filed under Article 227 of the Constitution of India, against the order dated 15.03.2023, passed in unnumbered I.A.No. ... of 2023 in O.S.No.38 of 2016, on the file of the District Munsif Court, Eraniel.

For Petitioner	:	Mr.M.Saravanan
For R2 to R6	:	Mr.S.Kameswaran Government Advocate

ORDER

The petitioner has filed this Civil Revision Petition to set aside the docket order dated 15.03.2023, passed in unnumbered I.A.No. ... of 2023 in O.S.No.38 of 2016, on the file of the District Munsif Court, Eraniel.

2.The petitioner herein is the second plaintiff in O.S.No.38 of 2016 before the District Munsif Court, Eraniel. The said suit has been filed by the petitioner herein along with her mother namely, the first respondent herein against the official respondents 2 to 6 herein. It appears that there is a *inter se* dispute between the



petitioner and the first respondent and that the petitioner has also filed a suit for partition against the first respondent and her brothers in O.S.No.49 of 2020, which is pending before the Sub Court, Eraniel.

3.The specific case of the petitioner is that the first respondent is not cooperating with the petitioner to conduct the case and therefore, she should be transposed as sixth defendant in the suit. Therefore, the petitioner has filed an application under Order I Rule 10(2) read with Section 151 of C.P.C. Instead of disposing the same, the Court below has refused to entertain the same and returned the petition with an endorsement "How the Petition is maintainable". Challenging the same, the petitioner has filed the present Civil Revision Petition.

4.Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents 2 to 6.

5.The application that has been filed by the petitioner for transposing the first respondent as sixth defendant can be entertained and disposed on merits by the Court below. The issue as to whether the application is maintainable or not can be decided on merits. It should not be rejected at the threshold itself before numbering it.



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6.Considering the above, I am inclined to dispose of the Civil Revision Petition at the stage of the admission, by directing the learned District Munsif, Eraniel, to number the application filed by the petitioner for transposing the first respondent as sixth defendant. Accordingly, the impugned order dated 15.03.2023, passed in unnumbered I.A.No. ... of 2023 in O.S.No.38 of 2016, on the file of the District Munsif Court, Eraniel, is set aside. The learned District Munsif, Eraniel, shall dispose the application on merits after numbering it within a period of 30 days from the date of receipt of a copy of this order.

7.This Civil Revision Petition stands allowed with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes/No

25.04.2023

Index : Yes/No

Internet : Yes/No

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Note:- Registry is directed to return all the original documents filed along with this revision after getting attesting copies of the same.

To

1.The District Munsif,
Eraniel.

2.The District Collector,
Kanyakumari Collectorate,
Nagercoil Post,
Nagercoil Village,
Agastheeswaram Taluk,
Kanyakumari District.



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C.SARAVANAN, J.

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Order made in
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