



WEB COPY

C.R.P(MD)



22

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.03.2023

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P (MD) No.1359 of 2022

and

Tr.C.M.P (MD) Nos.96 and 97 of 2023

and

C.M.P (MD) Nos.2401 and 2402 of 2023

C.R.P (MD) No.1359 of 2022

(Minor) P.U.Vijay Charan

S/o.P.Udhayakumar

Represented through his Mother and Guardian

M.Rajeswari @ Nisha ...Petitioner/Respondent/

Respondent/Plaintiff

Vs.

P.Indirakumari @ Indirarajan (Died)

1.S.R.M.Packirirajan

2.P.Ashok Kumar

... Respondents/Petitioners /Petitioners/

Defendants 2 and 4

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order passed in I.A.No.775 of 2019 in I.A.No.298 of 2019 in O.S.No.228 of 2019, dated 29.09.2021 on the file of the II Additional Subordinate Judge, Madurai.

For Petitioner : No Appearance

For R1 & R2 : Mr.R.R.Kannan

Tr.C.M.P (MD) No.96 of 2023

1.P.Ashok Kumar

2.S.R.M.Packirirajan

... Petitioners/ Defendants 4 and 2

Vs.

1.Minor.P.U.Vijay Charan

S/o.P.Udhayakumar

Represented through his Mother and Guardian

M.Rajeswari @ Nisha

...1st Respondent/ Plaintiff

2.P.Udhayakumar

3.The District Registrar,

Madurai South,

Palace Road,

Madurai - 625001

4.The Joint Sub Registrar No.1,

Madurai South,

Palace Road,

Madurai - 625001.

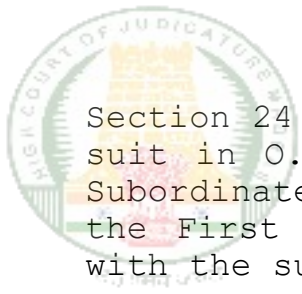
...Respondents 2 to 4/Defendants 3, 5 & 6

5.M.Rajeshwari @ Nisha

...5th Respondent/2nd Defendant

in O.S.No.1035 of 2021

PRAYER : Transfer Civil Miscellaneous Petition is filed under <https://www.mhc.tn.gov.in/judis>



Section 24 Code of Civil Procedure, to pass an order withdrawing the suit in O.S.No.228 of 2019 from the file of the Second Additional Subordinate Court, Madurai and to transfer the same to the file of the First Additional Subordinate Court, Madurai to be tried along with the suit in O.S.No.1035 of 2021.

For Petitioners : Mr.J.Barathan

Tr.C.M.P(MD)No.97 of 2023

1.P.Ashok Kumar

2.S.R.M.Packirirajan

... Petitioners/Defendants 1 and 3
Vs.

1.Minor.P.U.Vijay Charan

S/o.P.Udhayakumar

Represented through his Mother and Guardian

M.Rajeswari @ Nisha

...1st Respondent / Plaintiff

2.P.Udhayakumar

3.The District Registrar,

Madurai South,

Palace Road,

Madurai - 625001

4.The Joint Sub Registrar No.1,

Madurai South,

Palace Road,

Madurai - 625001.

...Respondents 2 to 4/Defendants 2, 4 & 5

5.M.Rajeshwari @ Nisha ...5th Respondent/ 2nd Defendant

in O.S.No.1035 of 2021

PRAYER : Transfer Civil Miscellaneous Petition is filed under Section 24 **(*)Deleted** of Code of Civil Procedure, to pass an order withdrawing the suit in O.S.No.1037 of **(*)2022** from the file of the Second Additional Subordinate Court, Madurai and to transfer the same to the file of the First Additional Subordinate Court, Madurai to be tried along with the suit in O.S.No.1035 of 2021.

For Petitioners : Mr.J.Barathan

COMMON ORDER

There is no representation on behalf of the petitioner in C.R.P(MD)No.1359 of 2022 (herein after referred as revision petitioner)/ Respondent in Tr.C.M.P(MD)Nos.96 and 97 of 2023 .

2. The revision petitioner is the respondent in the above two Tr.C.M.P(MD)Nos.96 and 97 of 2023. The above two transfer civil miscellaneous petitions have been filed by the respondents in CRP (MD)No.1359 of 2022.

3. The petitioners in the Tr.C.M.P(MD)No.96 of 2023 are the defendants 2 and 4 in the following suits filed by the revision petitioner.

S.No.	O.S.No.	Court
1	228 of 2019	II Additional Subordinate Court, Madurai
2	1037 of 2022	II Additional Subordinate Court, Madurai



4. The petitioners in the above transfer miscellaneous petitions has also filed the suit in O.S.No.1035 of 2021 before the First Additional Sub Court, Madurai for recovery of possession.

5. The revision petitioner had filed a suit in O.S.No.228 of 2018 against the four defendants, namely, P.Indirakumari, the grandmother of the revision petitioner/mother of the second respondent in the revision petition, grandfather of the revision petitioner/father of the second respondent in the revision petition and against the petitioners in the above transfer civil miscellaneous petitions

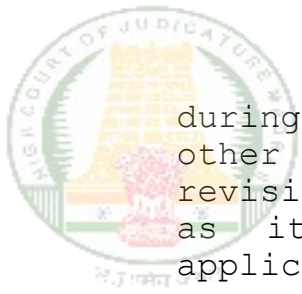
6. The brief facts of the case according to the second respondent/fourth defendant is that the suit property originally belonged to one V.Govindarajulu Naidu who settled the suit schedule property to late P.Indirakumari (since deceased), grandmother of the revision petitioner/mother of the second respondent in the revision petition/respondent in the transfer civil miscellaneous petition by a settlement deed, dated 30.01.1974.

7. During her life time, the revision petitioner's grandmother, late P.Indirakumari (since deceased) on 07.05.2019 settled the property to her second son, who is a bachelor. Therefore, O.S.No.228 of 2019 was filed by the revision petitioner. I.A.No.298 of 2019 in O.S.No.228 of 2018 was filed under Order 7 Rule 11 of C.P.C for rejecting the plaint. During the interregnum, since the first defendant late P.Indirakumari died on 07.05.2019. Therefore I.A.No.775 of 2019 was filed to amend the cause the title in the above application by the respondents in civil revision petition. The trial Court has passed an order allowing the application to amend the cause title in I.A.No.298 of 2019 filed under Order 7 Rule 11 of C.P.C. The relevant portion of the order impugned in the above civil revision petition reads as under:

"5. Both side heard. Case records perused. The respondent admitted that the first defendant died and this petitioner is one of the legal heir of the deceased first defendant. And there is no strong objection raised by respondent with respect to the properties amendment. And this Court has to grant sufficient opportunity to both parties to contest and establish their side case. And this petitioner has to prove the entire pleadings set forth by him on the strength of documents. And to avoid multiplicity of proceedings this petition is decided to be allowed.

In the result, for the discussed reasons, this petition is allowed without costs."

8. It is the case of the contesting respondent in the civil revision petition, who are the defendants in the suit filed by the revision petitioner that the application is being filed in the name of the minor by the elder brother son of late P.Indirakumari/father of the revision petitioner. He further submitted that there is no merit in C.R.P(MD)No.1359 of 2022. He further submitted that late P.Indira Kumari settled the property for her second son



during her life time and that the revision petitioner c
other son of late P.Indirakumari, namely the father of the
revision petitioner cannot claim any right over the property
as it is not an ancestral property. Therefore, the
application filed for amendment to the cause title and
averments in the application filed for rejecting the plaint
has been rightly allowed.

9. The learned counsel for the contesting respondent in the
civil revision petition who is also represented the interest of the
petitioners in the transfer civil miscellaneous petitions submit
that the cases can be transferred to be heard together.

10. In my view, the Trial Court has not committed an error
while allowing I.A.No.775 of 2019 in I.A.No.298 of 2019 in
O.S.No.228 of 2019. The Court has not determined the issue in the
suit or for that matter in I.A.No.298 of 2019 one way or the other.
The Court has merely recorded the death of first defendant late
P.Indirakumari. Therefore, challenge to the impugned order passed in
I.A.No.775 of 2019 in I.A.No.298 of 2019 in O.S.No.228 of 2019 has
no merits. Therefore, civil revision petition filed by the
petitioner/plaintiff in O.S.No.228 of 2019 is liable to be dismissed
and accordingly dismissed.

11. Considering the fact that there are three suits pending
before the two different Courts, namely, First Additional Sub Court
and Second Additional Sub Court, Madurai in the above three
mentioned suits and in the absence of any objection to transfer by
the revision petitioner/ respondent in the above transfer civil
miscellaneous petitions, the Court inclined to allow the Transfer
Civil Miscellaneous Petition Nos.96 and 97 of 2023 by directing
transfer of O.S.No.298 of 2019 and O.S.No.1037 of 2022 pending on
the file of Second Additional Subordinate Court, Madurai to First
Additional Subordinate Court, Madurai for being tried along with
O.S.No. (*)1035 of 2021.

12. In the result, Civil Revision Petition stands dismissed and
Transfer Civil Miscellaneous Petition stands allowed. No costs.
Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

**(*)Corrected as per the order of this court dated 28.04.2023 made
in CRP(MD).No. 1359 of 2022 & Tr CMP(MD).No. 96 & 97 of 2023**

Sd/-

Assistant Registrar(RT)

// True Copy //

/06/2023

Sub Assistant Registrar(CS)

sn

(*) To be sub substituted the order already despatched on

<https://www.mhlgovt.org> 18.04.2023



To

1.The I Additional Subordinate Judge, Madurai.

2. The II Additional Subordinate Judge, Madurai.

COPY TO:

The Section Officer

Vernacular Section,

Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.RR.KANNAN, Advocate (SR-16060[F] dated 17/03/2023)

+1 CC to Mr.T.R.JEYAPALAM, Advocate (SR-16570[F])

C.R.P (MD) No.1359 of 2022

and

Tr.C.M.P (MD) Nos.96 and 97 of 2023

17.03.2023

MK/13.04.2023 5P 7C

KB/08.06.2023 5P 7C