



CRP (MD) No.1728 of 2023

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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| <b>Reserved on</b>   | 21.07.2023 |
| <b>Pronounced on</b> | 27.09.2023 |

**CORAM:**

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

CRP (MD) No.1728 of 2023

and

CMP(MD)No.8619 of 2023

Kalimuthu

... Petitioner

Vs.

1.Muthusamy

2.Azhagirisamy

3.Duraisamy @ Azhagarsamy

4.Nagarajan

5.Kathirvel

6.Azhagiriraj

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating to the impugned fair and decreetal order dated 14.06.2023 and made in I.A.No.6 of 2022 in O.S.No.202 of 2009



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on the file of the District Munsif, Periyakulam, set aside the same and allow this civil revision petition.

For Petitioner : Mr.K.Appadurai

For R1 : Mr.Meenakshi Sundaram,  
Senior Counsel  
for Mr.Thirunavakkarasu

For R2 to R4 : Mr.A.Jeyakumar

### **ORDER**

This civil revision petition is preferred as against the order passed in I.A.No.6 of 2022 in O.S.No.202 of 2009 on the file of District Munsif Court, Periyakulam.

2. The suit in O.S.No.202 of 2009 was filed by the first respondent/plaintiff for partition and separate possession of his 1/5<sup>th</sup> share in the suit properties. During the pendency of the above suit, the petitioner/fourth defendant took out an application in I.A.No.6 of 2022 under Order 1, Rule 10(2) and under Section 151 of CPC to implead his sons as



fifth and sixth defendants in the suit. The said application was resisted on the side of the first respondent. The trial Court, after considering the averments made in the petition and counter affidavit and the arguments advanced on both sides, dismissed the petition. Against which, the present revision is preferred.

3. The learned counsel appearing for the revision petitioner would submit that the proposed parties are beneficiaries under the Will dated 09.06.2008 having direct right and interest in the suit items 2 and 3 of A schedule and entire B Schedule of suit properties. Therefore, in the absence of proposed parties, no effective decree could be passed.

4. The learned counsel for the first respondent would submit that the Will dated 09.06.2008 is a concocted and fabricated document, invented for the purpose of defeating the legal rights of the plaintiff. It is further submitted that the petitioner as natural guardian of the proposed parties filed a suit in O.S.No.214 of 2009 for the relief of permanent injunction, in which, an amendment application was filed to include the prayer of declaration of



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title in I.A.No.1 of 2021 and the same was allowed, against which, the first respondent/plaintiff preferred a revision in CRP(MD) No.183 of 2022 which was allowed by setting aside the order passed by the trial Court stating that the claim made by the petitioner is barred by limitation. The petitioner in order to overcome the limitation, has took out an application in the present suit in O.S.No.202 of 2009, which is a suit of partition to implead the sons of the fourth defendant as necessary parties to the suit. Therefore, the trial Court, after considering the above facts, rightly dismissed the application filed by the revision petitioner / fourth defendant. He would further submit that the plaintiff is the dominus litus and takes a risk of impleading/not impleading persons for obtaining due execution of decree and persons claiming collusion between the plaintiffs and defendants, ought to institute independent proceedings. To support his contentions, he has relied upon the decisions reported in **2018 (6) CTC 686 and CDJ 1998 MHC 1417.**

5. Heard on both sides and records perused.



6. The suit in O.S.No.202 of 2009 is filed by the first respondent/plaintiff for partition. The fourth defendant filed an application in I.A.No.6 of 2022 to implead his sons as defendants in the above suit stating that the property of the fourth defendant was bequeathed in favour of the proposed defendants on 09.06.2008 and therefore, they have direct interest in the suit property and they are necessary parties in the suit and without whom, there cannot be any fair adjudication. On perusal of the records, it is seen that the fourth defendant as guardian of the proposed defendants who are the sons of the fourth defendant filed a suit in O.S.No.214 of 2009 for bare injunction, in which, as plaintiff the fourth defendant in the suit took out an application in I.A.No.01 of 2021 to amend the plaint by including the prayer for declaration of title which was allowed by the trial Court. Aggrieved by this, the plaintiff /first respondent herein preferred a revision which was allowed by this Court stating that the said amendment is barred by limitation. Against which, the Review Application (MD) No.101 of 2020 preferred by the fourth defendant, which was also dismissed by this Court. Thereafter, the petitioner took out an application in the present suit in O.S.No.202 of 2009 to implead the proposed defendants as necessary parties in the present suit,



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which is unsustainable. If the proposed parties are added in the present suit, it would only lead to re-litigation of the earlier suit. The attempt of the revision petitioner is only an abuse of process of the Court and contrary to the principles of natural justice and public policy, which leads to re-litigate the same issue which has already been tried and decided earlier against him.

7. As rightly pointed out by the learned counsel appearing for the first respondent/plaintiff, though it may not be barred as *res judicata*, if the same issue is sought to be re-agitated, it amounts to an abuse of process of the Court. Therefore, the trial Court has rightly dismissed the application filed by the revision petitioner and the same calls for no interference. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

**27.09.2023**

NCC : Yes/No  
Index : Yes/No  
Internet : Yes  
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To  
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The Subordinate Judge,  
Kovilpatti.



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**K.GOVINDARAJAN THILAKAVADI**

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Pre-delivery order made in  
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