



C.R.P.(MD).No.1519 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD)No.1519 of 2019

and

C.M.P(MD) No.7980 of 2019

1. G.Varadharajan (Died)

... Petitioner/Petitioner/
Proposed 77th Defendant

2. B.Gnanarani

3. R.Bhavani

4. S.Kavitha

... Proposed Petitioners

(Petitioners 2 to 4 are brought on record as Legal
Heirs of the deceased sole petitioner vide order
of this Court dated 17.11.2022 made in C.M.P(MD)
No.1262 of 2022 in C.R.P(MD) No.1519 of 2019

-vs-

1. S.Pradeep

.... 1st Respondent/Plaintiff

K.S.Thangapandian (Died)

2. K.S.T.Sivarajan Pandian @
Mohanrajapandian

3. K.S.T.Navaneetha Krishnan

4. K.S.T.Shanmugaraja @ Jeyakumar

5. K.S.T.Krishnakumar

6. R.Nagarani

7. K.Brinda

8. A.Praveena



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9. V.Vijayaranga Muthulakshmi
10. V.Sivaramakrishnavijayan
11. V.Jayachandran
12. R.Senthilkumari
13. S.Duruvan
14. C.Mahalakshmi Thai
15. C.Siva Rangaraja
16. C.Siva Nagaraja
17. C.Siva Thaniraja
18. C.Sivakrishnaraja
19. S.Geetharani
20. Sivaponnurani
21. R.N.Jegadeesan
22. N.R.Manivannan
23. L.Kamalakannan
24. N.Palanikumar
25. N.Senthilkumar
26. A.Vairavan
27. G.Muralidharan
28. R.Saravanakumar
29. R.Shanmugam
30. R.Satyamoorthy
31. R.Kalyanasundaram
32. E.Arulsaravanan
33. R.Indra
34. V.Rajiv Kumar
35. V.Pathibakumar
36. N.Suganya
37. N.Muthurenganathavijayan
38. S.Abarna

39. Minor K.Vaishnavai
through guardian Krishnakumar
D/o. Krishnakumar

40. Minor K.Adhishree
through guardian Krishnakumar
D/o. Krishnakumar



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41. S.Ramakrishnaveni @ Baby

42. Minor S.Sivaswarya
through guardian
Geetha Devi,
D/o. Geetha Devi

43. G.Chandran

44. R.Sureshkumar

45. P.Radhakrishnan

46. P.Ponnusamy

47. P.Pandiaraj

48. V.Packiam

49. S.G.Natarajan

N. Vijayalakshmi (Died)

50. K.Dharmarajan

51. D.Sakthimayil

52. K.Selvarajan

53. S.Jeyapriya

54. L.Soundar

55. S.Ananth

56. S.Gokul

57. Murugan

58. Amtuha

59. Pandiarajan

60. C.Kumaresan

61. Saranya

62. K.Ravi

63. M.Indira

64. Sree Balaji Trading Company
Through Sri Iaguvararu Seenivasa Rao
Krishnamoorthy and
Shree Jalagnathi Shreenivasa Rao,
D.No.19-7-668, Sagadigunta,
Guntur – 522003,
Andhrapradesh.



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WEB COPY 65. Nageswara Rao

- 66. Kalavai Guruprasad Rao
- 67. Sri Kothavenkatasubba Rao
- 68. Sri Kothavenkata Varaprasada Rao
- 69. Sri Kotha Sambasiva Rao
- 70. Srinivasa Rao
- 71. Sri Gundavenkata Narasimha Rao

- 72. Sree Vijayasai Cotton Traders
Through Vemulasambasiva Rao & Atukari
Srinivasa Rao and Sri Gundu Venkata Bramhanda Rao,
D.No.4-1-15, Ramanna Petta 1st Line,
Opp., Rammanna Towers, Guntur – 522 003,
Andharapradhesh.

- 73. Nageswara Rao
- 74. Sooripeda Srinivasa Rao
- 75. V.Murugan

... Respondents 2 to 75/Respondents/
Defendants

(Respondents 2 to 75 notice not necessary as given up)

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and executable Order dated 13.08.2019 made in I.A.No.1 of 2019 in O.S.No.38 of 2012 on the file of the learned Additional District Judge, FTC, Theni.

For Petitioners : Mr.R.Suriyanarayanan

For Respondents : Mr.B.Rajesh Saravanan – for R1
: Given up – for R2 to R75



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ORDER

The present Civil Revision Petition has been filed by the petitioner under Article 227 of the Constitution of India, against the fair and executable Order dated 13.08.2019 made in I.A.No.1 of 2019 in O.S.No.38 of 2012 on the file of the learned Additional District Judge, FTC, Theni.

2. The first petitioner is the proposed 77th defendant and the first respondent is the plaintiff before the Court below.

3. The brief facts which give rise to the present Civil Revision Petition are that the first petitioner is the third party to a partition suit. According to the petitioner, he submits that he is a tenant of the vacant land of the suit in item Nos.6 and 8 of the property, and that they have put up superstructure over the said vacant land and that they have been in possession and enjoyment over the same since 1950. Therefore, he would submit that by virtue of Tamil Nadu City Tenants Protection Act, their rights have to be protected. Therefore, they are necessary and proper party in the proceedings.



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4. However, the said contention was objected by the learned counsel appearing for the first respondent who is none other than the plaintiff. The learned counsel appearing for the plaintiff would submit that this is only a suit for partition and that the proposed parties are only claiming a tenancy rights. For adjudicating the division of property the tenant's presence is not required, and that the tenant is not a proper and necessary party. Therefore, he prayed to confirm the order passed by the Court below.

5. This Court has given anxious consideration to the submissions of the learned counsel for the petitioners and the learned counsel for the first respondent.

6. It is well settled principle of law that necessary party is one without whom no effective decree and judgment could be passed. Similarly, the proper party is one, whose presence is necessary for complete and final adjudication. In this case, as rightly submitted by the learned counsel for the first respondent, the presence of the proposed parties is no way necessary for deciding the partition suit. However, the learned counsel for the petitioners would submit that since the tenant of the vacant site is having right over the



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superstructure, he may be construed as a proper party and prayed to implead in this case.

7. But, this Court is not in a position to agree with the submissions made by the learned counsel for the petitioners. Because, a tenant who claims right under the Tamil Nadu City Tenants Protection Act, would surface only when the owner of the property is filing the eviction suit.

8. Here no eviction is sought for against the proposed party or against the persons those who are occupying in item Nos.6 and 8 of the suit property. Therefore, this Court is of the view that the petitioner is not even a proper party.

9. In view of the above findings, this Court could not find any material irregularity with the order passed by the Court below.

10. In the result, this Civil Revision Petition is **dismissed**. However, the dismissal of the present impleading application will in no way affects the rights of the petitioners to file a similar application at the final decree



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proceedings. If such an application is filed, the Court below is directed to dispose of the same according to law without being influenced by the observation of this Court. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

15.09.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The Additional District Judge,
FTC, Theni.



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C.KUMARAPPAN,J.

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