



C.R.P(MD)Nos.1643 & 2301 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.11.2023

CORAM:

**THE HONOURABLE MR.JUSTICE P.B.BALAJI**

**C.R.P(MD)Nos.1643 & 2301 of 2019**

**and**

**C.M.P(MD)Nos.8576 & 12090 of 2019**

**C.R.P(MD)No.1643 of 2019**

1.Rajkumar

2.R.Subhashini

.... Petitioners

.VS.

1.V.Krishnaveni

2.Solairaj

3.Pankajavalli

4.Santhanamari

5.Lakshmi

6.R.Vijayakumar

7.R.Anand Prabhu

....Respondents

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 20.02.2019 passed in I.A.No.82/2018 in O.S.No.24/2018 on the file of the Additional District Court, Virudhunagar.



C.R.P(MD)Nos.1643 & 2301 of 2019

For Petitioners  
For R1  
For R2  
For R3, R6 & R7  
For R4 & R5

:Mrs.Vijayakumari Natarajan  
:Mr.S.Ramesh  
:Mr.S.Vellaichamy  
:Mr.H.Arumugam  
:No appearance

**C.R.P(MD)No.2301 of 2019**

1.R.Vijayakumar  
2.R.Anand Prabhu

.... Petitioners

.vs.

1.V.Krishnaveni  
2.Solairaj  
3.Rajkumar  
4.Pankajavalli  
5.Santhanamari  
6.Lakshmi  
7.R.Subhashini

....Respondents

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.82/18 in O.S.No.24/2018 dated 20.02.2019, on the file of the Additional District Judge, Virudhunagar.

For Petitioners  
For R1  
For R2  
For R3 & R7  
For R4, R5 & R6

:Mr.H.Arumugam  
:Mr.S.Ramesh  
:Mr.S.Vellaichamy  
:Mrs.Vijayakumari Natarajan  
:No appearance



WEB COPY



C.R.P(MD)Nos.1643 & 2301 of 2019

## **COMMON ORDER**

\*\*\*\*\*

These two revisions have been filed challenging the orders in I.A.No.82 of 2018 in O.S.No.24 of 2018 on the file of the Additional District Judge, Virudhunagar. The said application was taken out by the plaintiff seeking to implead the petitioners and the 7<sup>th</sup> respondent in C.R.P(MD)No.2301 of 2019 as defendants 6 to 8 in the suit. The suit is one for partition and separate possession. It appears that, originally partition was sought in respect of certain properties and thereafter, in the year 2012 the plaintiff amended the plaint and included further items in the suit schedule.

2. Though the trial proceeded with and the trial Court has also reserved judgment at that stage, the present I.A.No.82 of 2018 came to be filed by the plaintiff seeking to implead the proposed parties, out of which, two of them, who are the grand children of the plaintiff and one Subasini, who is the daughter-in-law of the plaintiff. The defendants 1 to 3 arrayed in the suit are the children of the plaintiff and the defendants 4 & 5 are the purchasers of certain items of the property from the defendants 1 to 3.



C.R.P(MD)Nos.1643 & 2301 of 2019

3. Pending suit, it is seen that an application in I.A.No.761 of 2012 was filed seeking to include certain properties in the suit and the said application came to be allowed. Thereafter, the plaintiff has taken out an application in I.A.No.82 of 2018 seeking to implead the proposed parties, namely daughter-in-law and grand-sons of the plaintiff, so that, it will avoid multiplicity of the proceedings and the suit will also not be dismissed on a technical ground of non-joinder of proper and necessary parties.

4. The said application was resisted by the second defendant namely one of the sons Rajkumar as well as the 3<sup>rd</sup> defendant and proposed defendants 7 & 8 on the ground that the application was liable to be dismissed as it came to be filed belatedly, that too, after the case was reserved for judgment. Further, it is stated that the properties belonging to the defendants 6 to 8 are their self acquired properties and they are not available for partition and therefore, the proposed parties need not be impleaded.

5. The second defendant filed a separate counter which was adopted by the respondents 3 & 7 wherein, it is stated that the application



C.R.P(MD)Nos.1643 & 2301 of 2019

cannot be maintained and it is reiterated in the said counter also that the properties belonging to the proposed respondents 7 & 8 are their self acquired properties and they cannot be included in the suit for partition.

6. The trial Court, finding some of the items of the suit schedule properties standing in the name of the proposed parties and they are the only legal heirs of the second and third defendants, allowed the application and held that to adjudicate the issues involved in the suit, they are necessary and proper parties in the suit, without whose presence no effective adjudication can take place. The trial Court has also held in favour of the application for impleadment citing the fact that the suit was very much pending and even a preliminary decree has not been passed and therefore, it will not alter the character of the suit. Aggrieved by the said order allowing the impleading application, the grand sons namely the respondents 7 and 8 in I.A.No.82 of 2018 have preferred C.R.P. (MD)No.2301 of 2019 and C.R.P(MD)No.1643 of 2019 has been filed by the second defendant, Rajkumar and one of the proposed parties namely the proposed 6<sup>th</sup> defendant. Both these revisions have been filed challenging the order in I.A.No.82/2018 on the ground that the application has been taken out belatedly and that the proposed parties are



C.R.P(MD)Nos.1643 & 2301 of 2019

not neither proper nor necessary parties and that they cannot be treated as co-owners and their properties be treated as joint family properties available for partition amongst the legal heirs of the Late Veerachamy Naidu and Krishnaveni.

7. I have heard the learned counsel appearing for the revision petitioners in both as well as the counsel for respondents and perused the records including the order impugned in the two revisions.

8. The suit is one for partition. Originally, the mother filed a suit against her children and two of the purchasers, who had purchased the properties from her children, claiming that certain items of the properties were properties of her husband and that they were available for partition and that she was entitled to a share in the properties.

9. Pending suit, it is seen that an application in I.A.No.761 of 2012 was filed seeking to include certain properties in the suit and the said application came to be allowed. Subsequently, certain items of the properties were included and in the included properties, right of the proposed defendants comes into play. It is the specific case of the



C.R.P(MD)Nos.1643 & 2301 of 2019

proposed parties that the properties are their self acquired properties and they are not available for partition. Unfortunately, in I.A.No.761 of 2012, the properties belonging to them have been permitted to be included in the suit for partition and subsequently, before the trial Court, the matter was also reserved for judgment. It has dawned on the plaintiff that the suit may be dismissed on a technical ground of non-joinder raised in the written statement filed after the amendment application. Therefore, it is the basis on which the plaintiff has sought to implead the proposed defendants. Though the application has been resisted by the proposed defendants, I am of the opinion that it is only in their interest that they are allowed to contest the suit and disprove the case of the plaintiff that their properties are not available for partition. They would also prevent multiplicity of proceedings.

10. No prejudice would be caused to the proposed parties if the impleading application is allowed as the properties belonging to them have been included as certain items of the suit properties, by way of an application in I.A.No.761 of 2012. The order in the said application has become final. I do not see any perversity in the findings of the trial Court directing to implead the proposed parties.



C.R.P(MD)Nos.1643 & 2301 of 2019

WEB COPY

11. In fine, these Civil Revision Petitions are dismissed. It is brought to my attention that amendment has already been carried out. Considering the fact that the suit is of the year 2010 and subsequently transferred to the file of the Additional District Court, Virudhunagar and renumbered as O.S.No.24 of 2018, the trial Court shall direct the newly added defendants to file their written statement within four weeks from the receipt of the copy of this order and shall have the suit tried expeditiously. No costs. Consequently, connected miscellaneous petitions are closed.

Index: Yes/No  
Internet: Yes/No  
NCC: Yes/No  
AM

**07.11.2023**

To  
The Additional District Court,  
Virudhunagar.



WEB COPY



C.R.P(MD)Nos.1643 & 2301 of 2019

**P.B.BALAJI,J.**

am

**C.R.P(MD)Nos.1643 & 2301 of 2019**

**07.11.2023**