



CMP(MD) No.12715 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)
Tuesday, the Seventeenth day of October Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice RMT.TEEKAA RAMAN

and

The Hon`ble Mr.Justice P.B. BALAJI

CMP(MD) No.12715 of 2023

in

AS(MD) No.56 of 2010

1 S.V.GANDHI

2 BHARATIPRIYA

3 NAMRITHAPARIMAL

4 NANDITHAPARIMAL (MINOR)

(THROUGH HER NATURAL GUARDIAN
THE MOTHER/2ND PETITIONER)

... PETITIONERS/3RD PARTIES
/PROPOSED RESPONDENTS 45-48

VS

1 G.SUBBARAJ (DIED)

... 1ST APPELLANT IN A.S

2 TAMILSELVAN @ SUBBA REDDY (DIED)

... 2ND APPELLANT IN A.S

3 SASIKALA DEVI

4 VALARMATHI DEVI

5 MALARVIZHI DEVI

6 KOTHAISELVI

7 LAKSHMI PRABHA

8 T.KAVITHA

9 MINOR S.T.GURUPRASATH

10 MINOR S.T.GURUPRASANNA ... RESPONDENTS 3-10/ APPELLANTS 3 TO 10

(MINOR APPELLANTS 9 AND 10 REP BY THEIR
GUARDIAN MOTHER A8)

<https://www.mhc.tn.gov.in/juds>



CMP(MD) No.12715 of 2023

11 RAMACHANDRAN(DIED)

... 1ST RESPONDENT IN A.S

WEB COPY

12 KOTHAIAMMAL (DIED)

... 2ND RESPONDENT IN A.S

13 S.GOVINDARAJULU

14 E.SINGAMA REDDY

15 THE DEPUTY DIRECTOR OF VETERINARY DEPARTMENT,
5-1-45 (UPSTAIRS), MAIN ROAD,
NEERETHAN, T.VADIPATTI POST & TALUK,
MADURAI DISTRICT.

16 T.KANDAN

17 R.BHARATHI

18 S.SHANMUGAM

19 V.MUTHUSAMY

20 A.PAULRAJ

21 A.PANDI

22 S.PERUMAL

23 N.ALAGARSAMY REDDIAR

24 M. SINGARA VELU

25 K. KRISHNAN

26 A. VAIRA PILLAI

27 THE MANAGER,
SARVOTHAYA KHADHI VASTIRALAYAM,
7-7-34, MAIN ROAD, NEERATHAN,
T.VADIPATTI POST AND TALUK,
MADURAI DISTRICT.

28 V. DURASAMY ASARI

29 R. VELLAICHAMY

30 P. GOWRI AMMAL

31 M/S.N.SELVAM AND BROTHERS
C/O.O.K.M.K.NATARAJAN, CHEKKANNOORANI,
TIRUMANGALAM TALUK, MADURAI DISTRICT.



CMP(MD) No.12715 of 2023

32 MUTHALIFF

33 KRISHNAN

34 P. SHANMUGAM

35 B. MURALI

36 S. KALYANIKONAR

37 V. GOVINDARAJ

38 K. PANDI

39 M/S.PANDIAN RUBBER AND ALLIED INDUSTRIES,
W/4-B7/209, PERIAKULAM ROAD,
THENI.

40 KOTTAIYAM RUBBER WORKS,
74, 75, PERIAKULAM ROAD,
THENI, MADURAI DISTRICT.

41 M. RAJENDRAN

42 M/S.MEENA SWEETS,
52, NRT ROAD, NRT NAGAR,
THENI.

43 R.SELVARAJ

44 SEETHARAMAN,

45 R.RENGASAMY

46 P. GOVINDANCHETTIYAR

47 R.KARUNANIDHI

48 R.KARUPPIAH SERVAI

49 R.VENKATASAMY REDDIYAR

50 A.AROKIASAMY

51 BANK OF INDIA,
VADIPATTI BRANCH, MAIN ROAD,
T.VADIPATTI POST AND TALUK, MADURAI DISTRICT.

52 CENTRAL BANK OF INDIA,
VADIPATTI BRANCH, MAIN ROAD,
T.VADIPATTI POST AND TALUK, MADURAI DISTRICT.



CMP(MD) No.12715 of 2023

53 CANARA BANK,
MAIN BRANCH, PANDIYAN HOUSE,
MADURAI TOWN.

54 PAPAMMAL ... RESPONDENTS 13 TO 54/RESPONDENTS 3 TO 44

(R3 TO R53 ARE GIVEN UP SINCE THEY WERE
EX-ORDINATED IN THE SUIT ITSELF)

Prayer in CMP(MD).12715/2023 :

To implead the petitioners/proposed parties herein as the Respondents No.45-48 in the above A.S.No.56/2010.

Prayer in AS(MD).56/2010 :

To prefer this memorandum of appeal suit against the judgment and decree in O.S.No.437 of 2004(originally O.S.No.1001 of 1990 on the file of Sub Court, Madurai, transfer as per Act 1/04 to the Principal District Court, Madurai and then made over to the Fast Track Court, Madurai No.2 dated 29.12.2008

ORDER : This civil miscellaneous petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.R.SURIYANARAYANAN, Advocate for the petitioner and of MR.S.VELLAICHAMY, Advocate on behalf of the 54th Respondent and MR.S.VENKATESH, Advocate for MR.A.SIVAJI, Advocate on behalf of the Respondent Nos.3 to 10, the court made the following order:-

Reserved on : 10.10.2023	Delivered on: 17.10.2023
--------------------------	--------------------------

ORDER

(Order of the Court was made by P.B.BALAJI,J.)

The petitioners seek to implead themselves as respondents 45 to 48 in the above appeal.

2. It is the case of the petitioners that they are the maternal grandchildren of

<https://www.mhc.tn.gov.in/judis>



CMP(MD) No.12715 of 2023

WEB COPY

Kothaiammal, who is the second respondent in the first Appeal through her daughter Parimala. It is the further case of the petitioners that the said Kothaiammal has executed a settlement deed in their favour on 11.03.1999 in registered document No.338/1999 and that thereafter, she also executed a Will on 27.03.2008, bequeathing her share in the family property. Similarly, the said Kothaiammal had also settled other items of the property in favour of the first petitioner's brother - Govindarajan on 18.06.2003 and in view of the demise of the said Govindarajan, his wife and children are the petitioners 2 to 4, who also propose to implead themselves along with the first petitioner.

3. The said application is resisted by the respondents 8 to 10 by way of filing a detailed counter affidavit, wherein, it is stated that the petitioners have not produced any legal heir certificate in respect of Kothaiammal and that according to these respondents, Kothaiammal had a daughter, who had a right in her estate and not the petitioners. They would also refer to an attempt made by these petitioners to implead themselves in A.S.No.200 of 2004 which application was not even pursued.

4. That part, they would also rely on an order passed in C.M.P.(MD)No.4328 of 2022 in the present First Appeal, where, they sought to implead themselves as legal heirs of successors of the deceased first respondent - Ramachandran. The said application was dismissed on 05.12.2022 and therefore, the petitioners have no right



CMP(MD) No.12715 of 2023

to get themselves impleaded as legal heirs of the second respondent - Kothaiammal.

WEB COPY

5. We have heard the learned counsel for the petitioners as well as the respondents. We have also perused the records.

6. The suit is one for partition. Preliminary decree was passed as early as on 29.12.2008 and the same was challenged by the appellants - K.G.Subbaraj, Tamilselvan @ Subbareddy and Sasikala Devi by preferring the above First Appeal. C.M.P.(MD)No.4328 of 2022 was filed by the first petitioner herein, to implead himself in this appeal as the 45th respondent. In the said Appeal, the first petitioner claims to be beneficiary under the Will of the first respondent - Ramachandran. This Court held that without proving the said Will, the first petitioner could not be impleaded and reserving liberty, subject to proving the Will in a manner known to law. Not satisfied with the said order, the revision petitioner filed a Review in Review Application No.45 of 2023, where she sought to modify the order passed in C.M.P.(MD)No.4328 of 2022 on the ground that the first petitioner has acquired title through not only Will, but also purchased properties under sale deeds, pending the litigation. However, this Court dismissed the said review application as one devoid of merits.

7. It is relevant to take note of the fact that even when then C.M.P.(MD)No.4328 of 2022 was filed seeking to implead the first petitioner as 45th respondent in the



CMP(MD) No.12715 of 2023

present first appeal, the second respondent - Kothaiammal was not alive. It was not the case of the first petitioner that he was already representing the estate of second respondent - Kothaiammal. Even in the review petition, he did not take up such a contention. After dismissal of the review petition another attempt has been made to implead the petitioners, now claiming right under the second respondent.

8. The learned counsel for the petitioners has also filed an additional typed set of papers containing sale deeds in favour of the first petitioner and his brother Govindarajan through whom, the petitioners 2 to 4 are claiming. It is seen that all the sale deeds executed in favour of the first petitioner were only by Mr.Ramachandran - first respondent. Insofar as the settlement deed executed by the second respondent- Kothaiammal, one is dated 11.03.1999 in favour of the first petitioner and another one is dated 18.06.2003 in favour of his brother Mr.Govindarajan. The petitioners cannot make piecemeal attempts to get themselves impleaded in the present first Appeal. The earlier attempt by the first petitioner to implead himself as a party / respondent, claiming to be a legatee of the first respondent was unsuccessful. Even the review petition seeking to modify the said order was also dismissed, and thereafter, joining hands with the legal heirs of the deceased brother - Govindarajan, again the first petitioner has filed yet another application, seeking to implead himself and his brother's legal heirs as respondents, thus claiming under the second respondent -



CMP(MD) No.12715 of 2023

Kothaiammal.

WEB COPY

9. Moreover, it is also brought to our notice that the contesting parties to the appeal, namely, the appellants and the respondents have already resolved amicably to settle their disputes and the appeal was referred to Mediation. It is also the categorical statement of the learned counsel for the respondents that the subject matter which is now in issue in the first appeal and admitted to be resolved in Mediation is not the property allotted to the second respondent - Kothaiammal, but, only the property of Late Mr.Ramachandran.

10. We are also aware of the fact that the suit itself ended in a compromise decree and it is only the actual and physical division by metes and bounds, which is pending before the Court. At this stage, it is undesirable to implead the petitioners herein as parties / respondents as the application is only an attempt to derail the preliminary decree already passed. Moreover, when the petitioners are admittedly claiming only under Kothaiammal - the second respondent in the first appeal and her share has not been called in question and it is the only share of the said Ramachandran - first respondent which is at large before this Court, we deem it unnecessary to implead these petitioners as they are neither proper nor necessary parties to the present Appeal.

11. We find no merit in the Civil Miscellaneous Petition. In fine, the instant



CMP(MD) No.12715 of 2023

Civil Miscellaneous Petition shall stand dismissed. There shall be no order as to cost.

WEB COPY

sd/-
17/10/2023

/ TRUE COPY /

/10/2023

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE SUBORDINATE JUDGE, MADURAI.

2 THE PRINCIPAL DISTRICT COURT, MADURAI

3 THE JUDGE, FAST TRACK COURT NO.2, MADURAI.

+1 CC to M/s.S.VELLAICHAMY, Advocate (SR-15274[I] dated 17/10/2023)

+1 CC to M/s.A.SIVAJI, Advocate (SR-15380[I] dated 18/10/2023)

+1 CC to M/s.R.SURIYANARAYANAN, Advocate (SR-48045[F] dated 17/10/2023)

ORDER IN
CMP(MD) No.12715 of 2023
in
AS(MD) No.56 of 2010
Date :17/10/2023

RS/VRS/SAR-(19.10.2023) 9P 7C

Madurai Bench of Madras High Court is issuing
certified copies in this format from 17/07/2023