



C.R.P.(MD) No.275 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 03.08.2023

CORAM

THE HON'BLE **MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

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Mariamamma (Died)

Yesudhas (Died)

Vijayakumar (Died)

Alphonse (Died)

1.Marystella Idapaul

2.Mary Glory

3.Emagulate Mary

4.Petter Paul

5.Mary Alphonse

6.Johnmary

... Petitioners

Vs.

Madhavan (Died)

1.Palayyan

Kannamma (Died)

2.Chellachi



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3.Dhasammal

4.Rosammnal

5.Kolamma

6.Manas

Solomen (Died)

Gopalan (Died)

7.Palayyan

Thankamoni (Died)

Chellayyan (Died)

Achuthan (Died)

Nesamoni (Died)

Thankayyan (Died)

Gnanamma (Died)

Podiyan (Died)

Kochumoni (Died)

Chellayyan (Died)

Gopinathan (Died)

8.Kumaravelu

9.Thompson



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10.Rengaswamy

11.Neelam (Died)

12.Nadankutty (Died)

11.Joseph,

Rajayyan (Died)

Selvamuthu (Died)

Neelakandan (Died)

12.Pechi Muthamma

Ramayyan Nadar (Died)

Thankammal (Died)

Chellappan (Died)

13.Veerapathiran

Palakuruswamy (Died)

Thankappan (Died)

Sathia Vakeeswaran (Died)

Ganapathy (Died)

Kannammal (Died)

Ponnamma (Died)

14.Saraswathi,

15.Ambujakchi,



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16.Anbian @ Chellayyan

17.Sundaran,

18.Muthunayagam,

Baskaran (Died)

19.Selvamon

20.Rajam

21.Ponnan

22.Natarajan

23.Sundari

24.Kumar

25.Usha

26.Sasi

27.Selvan,

Gomathi (Died)

28.Gopinathan,

29.Sundaradhas,

30.Moni,

31.Kasthuribai

32.Vinokumari



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33.Raman

34.Kunjan

35.Thankamoni

36.Saraswathy

37.Vasanthakumari

38.Ravi

39.Murugan

40.Vijayan

41.Lalitha

42.Padmini

43.Syla

44.Varghees

45.Thanislal

46.Ghabriel

Ponnasam (died)

47.Kanakaraj

48.Sundarraaj

49.Devaraj

50.Thankaswamy

Panchali (Died)



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51.Anitha

52.Geetha

53.Sindhu

54.Nelson

55.Santhakumari

56.Vasanthakumari

57.Ravikumar

58.Chellamma

59.Gigibai

60.Ramanibai

61.Rameshan

62.Chandrika

63.Sutheesan

64.Jegatheesan

65.Nalini

66.Rajendra Babu

67.Manumohan @ Asokan

68.Leelabai

69.Rajam



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70.Sakunthala

71.Nesam

72.David Jeyakumar

73.David Jeyaraj

74.David Jeyalal

75.Immanuvel

76.Selvi

77.Little Flower

78.Gnanarosemari,

79.Bhavani

80.Sivakumar

81.Jeyakumari

82.Jeyapratha

... Respondents

Prayer:- This Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, 1908, to call for the records of the fair and decreetal order passed by the learned Principal District Munsif, Kuzhithurai in E.A.No.180 of 2016 in E.P.No.110 of 2014 in O.S.No.336 of 1969 dated 29.11.2017 and set aside the same.

For Petitioners : Mr.B.Christopher

For R13 : Mr.C.K.M.Appaji

For R34 : Mr.N.S.Ramakrishnadass



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ORDER

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The above Civil Revision Petition is preferred by the petitioners against the impugned fair and decreetal order dated 29.11.2017 passed by the learned Principal District Munsif, Kuzhithurai in E.A.No.180 of 2016 in E.P.No.110 of 2014 in O.S.No.336 of 1969.

2. According to the revision petitioners, the plaintiffs filed E.P.No.110 of 2014 in O.S.No.336 of 1969 and filed E.A.No.180 of 2016 seeking exemption from impleading the legal heirs of the deceased 64th defendant namely, Raman S/o.Podiyar on the ground that he has no right in the suit property. However, the Executing Court without considering the above facts dismissed E.A., against which, this Civil Revision Petition is preferred.

3. The learned counsel appearing for the revision petitioners would submit that in the Judgement passed in O.S.No.359 of 2004, it was observed that I.A.No.1041 of 1990 was dismissed on the ground that the sons of Podiyar namely 64th and 65th defendants themselves filed counter affidavit stating that Podiyar had no right in the suit property and they are not necessary parties to the proceedings and the same was confirmed in the appeal filed by the 64th and 65th defendants.



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4. It is submitted that the lower Court ought to have rejected the contention of the 65th defendant for the reason that the order in I.A.No.1041 of 1990 was not produced by him in E.A.No.180 of 2016. It is further submitted that by virtue of Exs.P1 to P4, it is clearly proved that sons of Podiyan namely Raman and Kunjan have no right in the suit property and the 65th defendant is estopped from contending against Exs.P1 to P4.

5. It is further submitted that in a suit for redemption, if one of the defendant died, his legal heirs need not to be impleaded if his estate was represented by other defendants and therefore, the lower Court erred in dismissing the E.A.No.180 of 2016 in E.P.No.110 of 2014 in O.S.No.336 of 1969. The petitioners therefore pray for setting aside the impugned fair and decreetal order dated 29.11.2017 passed by the lower Court in E.A.No.180 of 2016 in E.P.No.110 of 2014 in O.S.No.336 of 1969.

6. The learned counsel appearing for the 34th respondent/65th defendant would submit that the 34th respondent/65th defendant has no objection to allow this Civil Revision Petition by setting aside the impugned fair and decreetal order dated 29.11.2017 passed by the lower Court in E.A.No.180 of 2016 in E.P.No.110 of 2014 in O.S.No.336 of 1969.



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7. Considering the above submission made by the learned counsels appearing for the petitioner and the 34th respondent/65th defendant, the impugned fair and decreal order dated 29.11.2017 passed by the learned Principal District Munsif, Kuzhithurai in E.A.No.180 of 2016 in E.P.No.110 of 2014 in O.S.No.336 of 1969 is set aside.

8. Considering the fact that the suit is of the year 1969, the learned Principal District Munsif, Kuzhithurai is directed to dispose the E.P., expeditiously, within a period of two months from the date of receipt of a copy of this order.

9. Accordingly, this Civil Revision Petition is allowed. No cost.

03.08.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To
The Principal District Munsif,
Kuzhithurai.



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