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C.R.P.No.3884 of 2016

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 20.11.2024**

**CORAM**

**THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN**

**C.R.P.No.3884 of 2016**  
**and C.M.P.No.19793 of 2016**

- 1.Perumalappa @ Kunjappa (Deceased)
- 2.Chinnamma
- 3.Goppalliappa
- 4.K.Kuppammal
- 5.Kuppuraj

(Petitioners 3 to 5 impleaded as the  
legal representatives of the deceased  
1st petitioner Perumalappa @ Kunjappa  
vide order of Court dated 20.11.2024 in  
CMP No.11465 of 2023 by VLNJ).

... Petitioners

-Vs-

- 1.Jagadesan
- 2.Srinivasan
- 3.Jayaraman
- 4.Raghunath
- 5.Thayappa
- 6.Megabool John
- 7.Vijayalakshmi Ammal
- 8.K.Loganathan
- 9.K.Ameer John
- 10.Ramakka
- 11.T.Murali

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India against the unnumbered I.A.No..... of 2016 in CFR No.1545 of 2016 in I.A.No.95 of 2015 in O.S.No.56 of 2006 on the file of the Additional District Judge, Hosur dated 21.09.2016.



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For Petitioner : Ms.Akshaya Narayanan  
for Mr.R.Narayanan  
For Respondents : Respondents 1,3 and 5 - Served, no appearance  
Ms.Priyadarshini  
for Mr.G.M.Ananthakumar for R9  
RR 2, 4 and 7 - Not ready in notice  
R11 - Refused  
R10 - Died  
RR 6 and 8 - Steps due

### **ORDER**

This Civil Revision Petition arises against the order passed by the learned Additional District Judge, Hosur in unnumbered I.A.No... of 2016 in I.A.No.95 of 2015 in O.S.No.56 of 2006.

2. O.S.No.56 of 2006 is a suit for the following reliefs:

- a) For preliminary decree for partition of the plaint schedule property into two equal shares and allot one such share with separate possession to the plaintiffs.
  - a1) To declare that the alleged power of attorney dated 15.10.1984 is null and void and not binding on the plaintiffs.
  - a2) To declare that the sale deeds purported to be executed by the power agents ie., 6, 7th defendants are null and void and not binding on the plaintiffs and the same be set aside.  
(a1, a2 reliefs were added by amendment order dated 2.8.2013 passed in I.A.No.110 of 2013)
- b) For the appointment of Commissioner for effecting partition in terms as the preliminary decree.
- c) For costs of the suit
- d) Granting such other reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case.



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3. The suit is at the stage of trial and therefore, it is not necessary to discuss on the other aspects of the case, save the necessary facts for the disposal of the revision.

4. The plaintiff filed I.A.No.95 of 2015 seeking for a direction that the defendants 5 to 11 should deposit a sum of Rs.6.25 Crores to the credit of O.S.No.56 of 2006. The plaintiff pleaded that pending the suit, the power agent Maqbool Jaan and respondents 5 and 8 to 11 had created four sale agreements and three sale deeds with respect to the suit property. They allege that even the public utility spaces that had been earmarked, in the approved Plan No.2 of 1983 had also been alienated. Since the plaintiffs claim that they are the sole and absolute owners of the property, they are entitled for the amount received by the respondents 5 to 11. Hence the petition.

5. Pending this petition, the 10th defendant passed on. Though the legal heir of the 10th defendant is already on record as the 11th defendant, by way of abundant caution the plaintiffs filed I.A.No.104 of 2016 to bring on record two persons viz, Kaveriappa and Sampangiappa, the other legal heirs of the deceased 10th defendant as parties to the suit. This application filed under Order XXII Rule 4 of CPC came to be allowed on 10.08.2016.



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6. In the meantime, the learned Judge had dismissed I.A.No.95 of 2015 on 15.06.2016 stating that steps had not been taken to bring on record the legal representatives. Therefore, in order to restore I.A.No.95 of 2015, an application was filed under Order IX Rule 9 of the Civil Procedure Code. The learned Additional District Judge dismissed the said application on 21.09.2016. He did not even number the said petition. Hence, this revision.

7. Heard Ms.Akshaya representing Mr.Narayanan for the civil revision petitioner and Ms.Priyadarshini representing Mr.G.M.Anantha Kumar for the respondents.

8. The narration of the facts shows that the legal heirs (Thayappa and T.Murali) of the 10th defendant viz., Ramakka are already on record as 5th and 11th defendants. The 11th defendant had been brought on record pursuant to the order of the Court in I.A.No.187 of 2013 dated 26.08.2013. When a legal heir is already on record, the question of taking fresh steps to bring on record the legal representatives does not arise. This is because, the arrayed defendants represent the estate of the deceased. However, to avoid any objections, the plaintiff filed I.A.No.104 of 2016 to bring on record the legal representatives and that also stood allowed on 10.08.2016. When the party has been brought on record in the suit, it is unnecessary to file a fresh application to bring the parties on record in an



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interlocutory application. The very same Judge had allowed the LR petition on 10.08.2016 and took up the application in unnumbered I.A.SR.No.1545 of 2016. He should have been aware that he had allowed the application on 10.08.2016. Therefore, I am not in a position to sustain the order dismissing the petition on 21.09.2016. Since the legal representatives are already on record, the order passed by the learned Judge on 21.09.2016 is set aside. I am convinced with the reasons given in the affidavit. The learned Additional District Judge shall number the application and allow I.A.SR.No.1545 of 2016. Consequently, I.A.No.95 of 2015 stands restored on to the file of the learned Additional District Judge, Hosur. As the pleadings are complete, the learned Judge is directed to dispose of the said application within a period of six weeks from the date of receipt of a copy of this order.

9. With the above directions, the Civil Revision Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

**20.11.2024**

Index : Yes/No

Neutral Citation : Yes/No

KST

To

The Subordinate Judge  
Mannargudi.



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**V. LAKSHMINARAYANAN, J.**

KST

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