



C.R.P.(PD)No.4551 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **03.12.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4551 of 2024
and C.M.P.No.25347 of 2024

R.Devarajalu (died)

D.Vijayakumar

.. Petitioner

Vs

1. S.Padmavathi

2. S.Ranganathan

3. S.Venkatesh

4. R.Krishnamoorthy

5. Radhamani

6. T.K.Damodaran

7. Banumathi

8. Ravichandran

9. Govindaraj

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 04.01.2024 made in I.A.No.2 of 2023 in O.S.No.765 of 2010 on the file of the I Additional Subordinate Court at Coimbatore.

For Petitioner : Mr.S.Thangavel



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For RR1 to 3 : Mr.K.M.Hareesh

For RR4 to 9 : Mr.P.Valliappan, Senior Counsel
for M/s.P.V.Law Associates

ORDER

This civil revision petition arises against the order passed by the learned I Additional Subordinate Judge at Coimbatore in I.A.No.2 of 2023 in O.S.No.765 of 2010 dated 04.01.2024.

2. The civil revision petitioner is the 2nd plaintiff in the suit. He has been brought on record as a legal representative of the deceased 1st plaintiff. It is not necessary to delve deep into the facts of the case. Suffice it to say, O.S.No.765 of 2010 is a suit for partition and separate possession. The defendants 1 to 4 were served and they had also entered appearance in the suit.

3. Pending the suit, the defendants 1 to 3 filed an application to implead respondents 5 to 9 herein as defendant Nos.5 to 9 in the suit. This application was received as I.A.No.2 of 2023. The application was resisted by the plaintiffs pleading that the proposed defendants had already executed a release deed in favour of the deceased 1st plaintiff,



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R.Samalu/father of defendants 2 & 3 and R.Krishnamurthy/4th defendant.

The release deed is a registered document dated 27.11.1985. The learned Judge proceeded to allow the application, without issuing notice to the proposed defendants. Hence, this revision.

4. When the matter came up for admission on 15.11.2024, I requested Mr.S.Thangavel to serve notice on the parties and listed the matter today.

5. I heard Mr.S.Thangavel for the civil revision petitioner, Mr.K.M.Hareesh for respondents 1 to 3 and Mr.P.Valliappan, learned Senior Counsel, for M/s.P.V.Law Associates on behalf of respondents 4 to 9.

6. In a suit for partition, every sharer is entitled to be impleaded as a party. This is the fundamental principle of law. It is the case of Mr.S.Thangavel that, on 27.11.1985, the proposed parties had executed a release deed. Therefore, they are not necessary parties.

7. Mr.P.Valliappan points out that the release deed dated 27.11.1985 was with respect to the ancestral properties and not for the



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self-acquired properties, which is the subject matter of the present suit. I need not trouble myself to give finding to the said issue. I find serious lacuna in the procedure that has been followed by the learned Judge. The learned Judge has allowed the application for impleading, even without issuing notice to the proposed parties.

8. A party, who is to be impleaded as a party to the suit, is entitled to be heard before an order is passed impleading him. That procedure has not been followed. Hence, I am interfering with the order only on that ground. Whether the release deed exonerates the necessity of impleading defendants 5 to 9 as parties to the suit or whether it is confined to ancestral parties alone are the matters which the learned Judge would take a call again after hearing the proposed parties. Since notice has not been served on the proposed parties, I am inclined to interfere with the order of the learned Judge.

9. The civil revision petition stands allowed with the following directions:

(i) The order dated 04.01.2024 made in I.A.No.2 of 2023 in O.S.No.765 of 2010 on the file of the I Additional Subordinate Court at



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Coimbatore is set aside.

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(iii) The learned Judge shall issue notice to the proposed defendants 5 to 9. Once they are served, the learned Judge shall hear their objections, if any, and pass orders after hearing the submissions of the plaintiff and defendants 1 to 3.

(iv) The said application will be disposed of within a period of **eight weeks** from the date of service of defendants 5 to 9. No costs. Consequently, connected miscellaneous petition is closed.

03.12.2024

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

kj

To

I Additional Subordinate Judge at Coimbatore.

V. LAKSHMINARAYANAN,J.



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