



WEB COPY



C.R.P.(PD).No.2797 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2024

CORAM

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN, J.

C.R.P.(PD).No.2797 of 2024

and

C.M.P.No.14851 of 2024

1. M/s. AVIGNA AMAIRA PRIVATE LIMITED

Rep by its Authorized Representative

Mr. P. Sathish Kumar

Regd. Office at No.1822, I Block

13th Main Road, Anna Nagar West,

Chennai – 40.

2. M/s. AVIGNA IRRA PRIVATE LIMITED

Rep by its Authorized Representative

Mr. P. Sathish Kumar

Regd. Office at No.1822, I Block

13th Main Road, Anna Nagar West,

Chennai – 40.

... Petitioners/Defendants 31 & 33

..Vs..

1. Lakshamma @ Lakshmi Devi. K

2. Rukmani

3. Lakkamma

4. Kanthamma

5. Savithramma

6. Yasodha

7. Sailaja

... Respondents/Plaintiffs



C.R.P.(PD).No.2797 of 2024

8. Minor M.S.Pranav Teja
9. Minor M.S.Hema Tharani
[Minor respondents represented by their mother/natural guardian viz.,
Sailaja, 7th respondent herein]

10. Manoranjitha

11. M/s. KEGG FARMS PVT. LTD.,
Rep by. Shashi Kapur
Reg Office. VIII Floor,
Eros Apartments, No.56,
Nehru Place, New Delhi – 19.
Permanent Resident of VIII, Khandsa,
Gurgaon, Haryana.

12. M/s. JYOTI GREEN ENERGY PVT. LTD.,
Rep by. Nalluri Padma Rao
Reg Office at II Floor, RASI NILAYAM,
First Anandan Street, North Usman Road,
T.Nagar, Chennai-600 017.

13. K.V.Sivapraksh
14. K.S.Narasing Rao
15. P.Ravichandran
16. N.Sivanandha
17. K.Sundara Murthy
18. K.M.Balusamy
19. R.Srinivasa Babu
20. Ravindra Subbanna

21. M/s. MAHARSHI INSTITUTE OF CREATIVE
INTELLIGENCE, UTTAP PRADESH
Rep. Secretaries, at Maharishi Vidya Mandir Sr. Sec. School
Sipcot, Hosur – 635 126.



C.R.P.(PD).No.2797 of 2024

22. Ramanji Reddy
23. Anita Ramanji @ Anitha T
24. G.Lokesh
25. K.S.Thillainathan
26. Manoharan
27. Shruthi Manoharan

28. Minor Roshan
[Minor respondent represented by his father/natural guardian viz.,
Manoharan, 26th respondent herein]

29. Murali Narayanappa
30. Muniraj
31. Manohar
32. Sivakumar

33. MAJETHIA KASHYAP JITENDRA HUF
Rep by. Majetha Kashyap Jitendra
Reg. Office at. Giriraj Anexe,
Travellers Bungalow Road, Hubli – 580 029
State of Karnataka

34. M/S. SAPPHIRE PROVENTURES PVT., LTD.,
Rep by. Ajith M.Kulkarni
Reg Office at Plot No.40 A, Phase 2nd ,
Doddanekundi Industrial Area, K R Puram,
Bangalore – 560 048

35. CATALYST TRUSTEESHIP LIMITED
Rep By. Debenture Trustee,
Reg. Office at. GDA House, 1st Floor,
Plot No.85 S No.94 & 95, Bhusari Colony (Right),
Kothrud, Pune – 411 038.

... Respondents/Defendants



C.R.P.(PD).No.2797 of 2024

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, seeking to strike off the plaint in O.S.No.203 of 2024 pending on the file of the Additional District Court, Hosur as against the Petitioners/Defendants 31 & 33 are concerned.

For Petitioners	: Mr.A.Mohan
For R1 & R2	: Mr.N.Subbarayalu
For RR3, 11, 12, 13, 15, 17, 18, 20, 22 to 33	: No appearance
For RR4 to 10	: Mr.G.Jeremiah Geregory John
For RR8 & 9	: Minors represented by R7
For RR14 & 16	: M/s.R.Madhubala For Mr.A.Saravanan
For R19	: Died
For R21	: Mr.P.Jayalakshmi For Mr.Sathish Chandrasekaran

ORDER

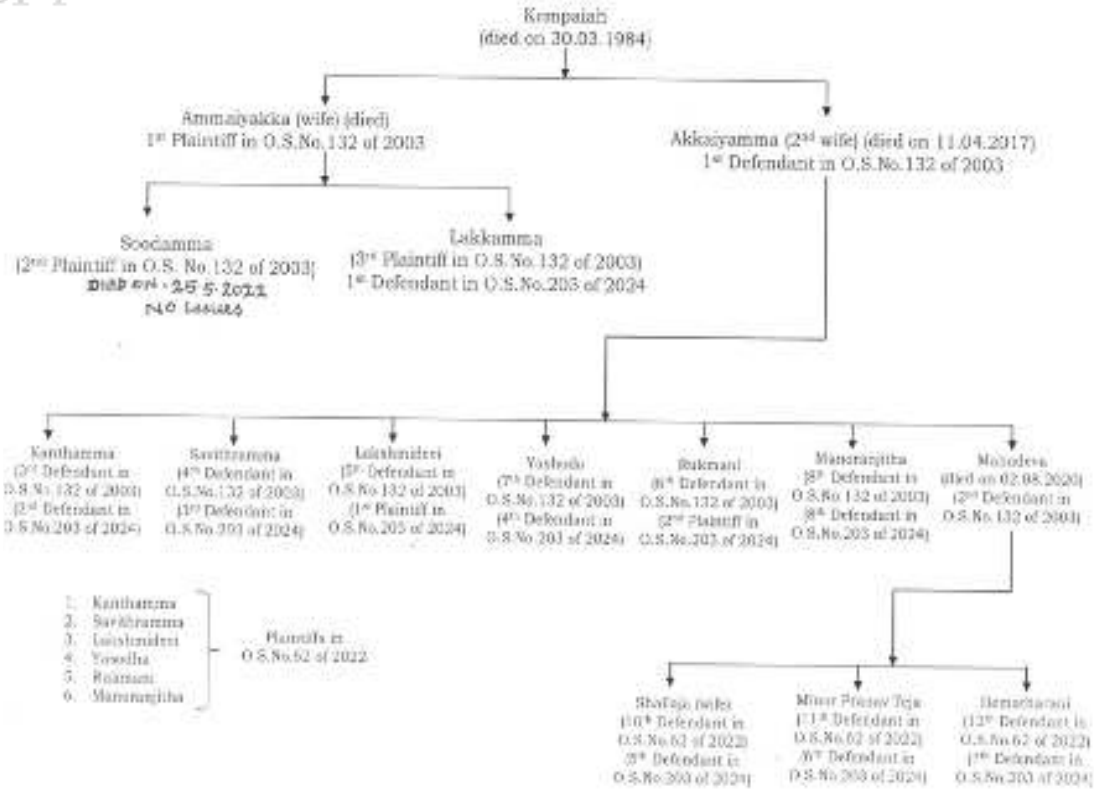
This Civil Revision Petition seeks to strike off the suit in O.S.No.203 of 2024, on the file of the learned Additional District Judge at Hosur.



C.R.P.(PD).No.2797 of 2024

WEB COPY

2. The Civil Revision Petitioner is a third party purchaser of the suit properties. The properties originally belongs to the two brothers namely Kempaiah and Gudiyappa. The said Kempaiah was a twice married man. Through the first wife viz., Ammaiyakka, he had two children by name Soodamma and Lakkamma. Through the second wife viz., Akkaiyamma, he had six daughters and one son. They are (i) Kanthamma (ii) Savithramma (iii) Lakshmidevi (iv) Yasodha (v) Rukmani (vi) Manoranjitha and (vii) Mahadeva. The son of Kempaiah namely Mahadeva also died on 02.08.2020, leaving behind his legal heirs i.e., his wife Shailaja, Minor son Pranav Teja and minor daughter Hemantharani. For ready reference, the family tree is set forth below:



3. The first wife of Kempaiah namely Ammaiyaikka and her daughters filed a suit for partition in O.S.No.132 of 2003 seeking for partition and separate possession of the properties left behind by Kempaiah. In the said suit, the present plaintiffs', Lakshamma @ Lakshmi Devi and Rukmani, were impleaded as 5th and 6th defendants. When the suit was taken up for



C.R.P.(PD).No.2797 of 2024

trial, the defendants 5 and 6 were given up. After trial, the suit was decreed on 13.09.2007.

4. Aggrieved by the same, a regular appeal was preferred before the learned Principal District Judge, Krishnagiri in A.S.No.19 of 2007.

5. The Appeal Suit had been preferred by the defendants 1 to 4 and 8 and 9 namely, the second wife of Kempaiah viz., Akkaiyamma and her children. The said Appeal Suit came to be allowed on the ground of non-joinder of necessary parties. This was because Lakshmamma @ Lakshmi Devi and Rukmani had been given up from the array of parties as pointed out above.

6. Aggrieved by the same, the plaintiffs' had preferred a Second Appeal before this Court in S.A.No.1271 of 2008.

7. This Second Appeal was dismissed as withdrawn on 07.03.2024. While the Second Appeal was pending, another suit for partition was



presented by the daughters, through the second wife of Kempaiah. It must be pointed out that the plaintiffs' in the second suit were the children of second wife, whereas, the plaintiffs' in the first suit was the first wife and her children. This suit in O.S.No.62 of 2022 came to be dismissed as withdrawn on 24.01.2024. Subsequently, the 3rd and 5th daughters of Kempaiah through Akkaiyamma (second wife) presented O.S.No.203 of 2024.

8. The Civil Revision Petitioners, who are the 31st and 33rd defendants to the suit pleads that, this suit for partition is an abuse of process of law; since permission under Order XXIII of the Code of Civil Procedure had not been taken at the time of withdrawal of O.S.No.62 of 2022. They added there is a bar under Order II Rule 3 of the Code of Civil Procedure; and that no leave had been taken by the plaintiffs' prior to presentation of the fresh plaint.

9. I heard Mr.A.Mohan, learned counsel appearing for the Civil Revision Petitioners and Mr.N.Subbarayalu, learned counsel appearing for the respondents 1 and 2/plaintiffs and Mr.G.Jeremiah Gregory John, learned counsel appearing for the respondents 4 to 10 and M/s.R.Madhubala learned counsel for Mr.A.Saravanan, learned counsel appearing for the



C.R.P.(PD).No.2797 of 2024

respondents 14 and 16 and M/s.P.Jayalakshmi learned counsel for Mr.Sathish Chandrasekaran, learned counsel appearing for the respondent No.21.

10. The narration of the aforesaid facts would go to show that there is no dispute in the relationship between Ammaiyakka and Akkaiyamma. Both of them are wives of one deceased Kempaiah. Ammaiyakka and her daughters had filed a suit for partition, which though initially was decreed and finally, it came to be dismissed for non impleading of necessary parties. The said decree had been confirmed by this Court, by virtue of withdrawal of S.A.No.1271 of 2008. The withdrawal took place on 07.03.2024. This shows that the properties that were left behind by Kempaiah, on his death on 30.03.1984, remain unpartitioned.

11. Mr.A.Mohan, vehemently pleads that, as one of the sharers had dealt with the suit properties and since in the previous round of litigation namely in O.S.No.62 of 2022, a declaratory relief had been sought for, the very same relief cannot be pleaded in the present suit. The present suit is not one, for declaration of title but, it is the suit for general partition of the



properties left behind by Kempaiah. The second suit for partition would not be maintainable if, there had been a previous partition in the family. The previous partition can be, “by way of a Partition Deed” or “by way of final decree” passed by the Court.

12. Unfortunately, for the civil revision petitioners, there is no partition deed. That leaves out only the previous proceedings in O.S.No.132 of 2003 and O.S.No.62 of 2022. O.S.No.132 of 2003 came to be dismissed as not maintainable and therefore, there was no decree of partition. O.S.No.62 of 2022 came to be withdrawn on 24.01.2024, that too, shows that no decree was passed in the suit. Therefore, as long as a family is joint, the cause of action to seek for partition continues.

13. It continues day to day and unlike the suit which is governed by declaration of title and recovery of possession, there is no outer limit of 12 years. It is up to the defendants to plead and prove ouster, if it is so open to them. If alienations had been made by the member of a family in favour of a third party, the said third party could have always brought a suit for



partition. Instead of putting the burden on the purchaser, the daughters of Kempaiah through his second wife, had decided to enforce their right over the property by presenting the present suit. As the properties of Kempaiah remained unpartitioned, the question of seeking leave of the Court under Order II Rule 2 of the Code of Civil Procedure does not arise.

14. With respect to the plea of Order XXIII of the Code of Civil Procedure being a bar, a careful perusal of the provisions shows that, if a suit is withdrawn, then, a suit on the same cause of action cannot be brought forth again, without leave of the Court. As I pointed out above, the cause of action for a suit for partition continues as long as the family assets remain undivided. The cause of action for the first suit, obviously, cannot be treated as the cause of action for the second suit.

15. At this stage, Mr.Mohan, draws my attention to a release deed said to have been executed by the plaintiffs' herein on 12.10.2020 in favour of the minor son and daughter and wife of their brother Mahadeva. Placing reliance upon the Release Deed, Mr.A.Mohan argues that as the plaintiffs'



C.R.P.(PD).No.2797 of 2024

have given up their rights, there is no cause of action for them, to file the present suit.

16. A reading of paragraph No.24 of the plaint shows that the plaintiffs' plead that they never executed any Release Deed dated 12.10.2020 in favour of the defendant Nos.6 and 7. i.e., the children of Mahadeva. At that time of rejection of plaint, as is sought to be done presently, I have to see whether the Release Deed that has projected, has been admitted by the plaintiffs'. If the Release Deed is admitted by the plaintiffs' then, obviously, Mr.A.Mohan is right and they would not have a cause of action to continue the proceedings. However, the reading of paragraph No.24 shows that the plaintiffs' have denied the execution of the document itself which means, it gives raise to the disputed question of fact. That being the situation, I cannot sitting in revision, convert myself as a Court of original jurisdiction and deal with the issue.

17. In any event, in order to strike off the plaint under Article 227 of the Constitution of India, as held by my brother **Mr.Justice D.Bharatha Chakravarthy in N.Periyaswamy vs. Mohd.Bilaldeen, C.R.P.(MD).No.671**



C.R.P.(PD).No.2797 of 2024

of 2022 dated 23.08.2024, I have to come a conclusion that pushing the parties to trial in itself would result in injustice. I am convinced that the properties of Kempaiah remained undivided, despite the filing of two suits in O.S.No.132 of 2003 and O.S.No.62 of 2022, on the file of the Subordinate Court at Hosur and Additional District Court at Hosur, respectively. Therefore, unless and until the families assets are divided, I cannot come to a conclusion, that the present suit is an abuse of process of Court.

18. In the light of the above discussion, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition stands closed.

04.11.2024
(2/2)

ssi
Index : Yes
Internet : Yes
Neutral Citation Case: Yes/No

V.LAKSHMINARAYANAN, J.

ssi



WEB COPY



C.R.P.(PD).No.2797 of 2024

C.R.P.(PD).No.2797 of 2024

04.11.2024
(2/2)