



CRP No.4690 of 2023

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

**DATED: 09.01.2024**

**CORAM**

**THE HONOURABLE MR. JUSTICE V.SIVAGNANAM**

**CRP No.4690 of 2023**  
**and CMP.No.27881 of 2023**

1.Duraisamy  
2.Venkattammal

... Petitioners

Vs.

1.Kamsala  
2.Manjula  
3.Velu  
4.Mohan  
5.Vanjikodi  
6.Radha  
7.Prabhu  
8.Tamizharasu

... Respondents

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 05.10.20213 made in I.A.No.03 of 2023 in O.S.No.109/2023 passed by the Subordinate Court, Thirupathur.

For Petitioners : Mr.K.Venkateswaran



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## **ORDER**

This Civil Revision Petition has been filed challenging the fair and decreetal order dated 05.10.20213 made in I.A.No.03 of 2023 in O.S.No.109/2023 passed by the Subordinate Court, Thirupathur.

2. The learned counsel for the petitioners submitted that the petitioners are the defendants and the respondents are the plaintiffs in O.S.No.109 of 2023 on the file of the Subordinate Court, Thirupathur. The plaintiffs filed the suit for partition with regard to plaint schedule properties. Since the plaintiff schedule property is not available for partition, the defendants filed I.A.No.3 of 2023 for rejection of plaint. It is further submitted that the properties sought to be partitioned are not available for partition and some of them were already sold to the settlees and in these circumstances, the plaint has to be rejected and therefore, prays for allowing of this civil revision petition.



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3. Heard the learned counsel for the petitioners and perused the materials on record.

4. A perusal of the materials reveals that the plaintiffs/respondents filed the suit for partition of the plaint schedule properties and the petitioners are the defendants in O.S.No.109/2023 on the file of the Subordinate Court, Thirupathur. The defendants filed a written statement and contended that the plaint schedule properties are not available for partition as already some properties were settled and some properties were sold and certain material facts were not disclosed in the plaint. The Trial Court has come to the conclusion to dismiss the I.A.No.03/2023 for rejection of plaint on the ground that the properties claimed by the plaintiffs are ancestral property of one Annamalai and also recorded that the alleged Settlement Deed dated 24.03.2006 is also questioned by the plaintiffs. Under these circumstances, based on the settlement executed by Annamalai, it cannot be held that the suit schedule property is not available for partition and therefore, dismissed I.A.No.3 of 2023 filed by the petitioners.



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**V.SIVAGNANAM, J.**

Jvm

5. In adjudicating the case, the Civil Court has to see the plaint averments alone and not the defence taken by the defendants and therefore, the Trial Court has rightly dismissed the petition filed by the petitioners and this Court finds no reason to interfere with the order of the Trial Court.

6. Accordingly, the Civil Revision Petition is dismissed. It is open to the petitioners /defendants to raise all their defence before the Trial Court at the time of trial. No costs. Consequently, connected miscellaneous petition is also dismissed.

**09.01.2024**

Index: Yes/No  
Internet: Yes/No  
Jvm  
To  
The Court of Subordinate Judge,  
Thirupathur.

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