



C.R.P(MD)Nos.94 & 95 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.09.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P(MD)Nos.94 & 95 of 2024

and

C.M.P(MD)No.451 of 2024

C.R.P(MD)No.94 of 2024:

S.Ali Akbar

... Petitioner /
Petitioner /
Plaintiff

Vs.

S.Ahamed Abubacker @ S.A.Abubacker (Died)

1.Abdul Latheef

2.B.Hasina @ Hasina Begam

... Respondents 1 & 2 /
Respondents 2 & 3/
Defendants 2 & 3

3.Ajhar Hameed

4.Jasmine Nihar

5.Anisha Parveen

... Respondents 3 to 5 /
Respondents 3 to 5/
Proposed Defendants 4 to 6



C.R.P(MD)Nos.94 & 95 of 2024

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 18.11.2023 passed in I.A.No.8 of 2021 in O.S.No.106 of 2017 on the file of the Special Court (Forest Cases) , Nagercoil by allowing this Civil Revision Petition.

For Petitioner : Mr.R.Murugan

For Respondents : Mr.V.George Raja
for R.1 & R.2

C.R.P(MD)No.95 of 2024:

S.Ali Akbar

... Petitioner / Petitioner /
Petitioner / Plaintiff

Vs.

S.Ahamed Abubacker @ S.A.Abubacker (Died)

1.Abdul Latheef
2.B.Hasina @ Hasina Begam

... Respondents 1 & 2 /
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4.Jasmine Nihar

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... Respondents 3 to 5 /
Respondents 3 to 5/
Respondents 3 to 5
Proposed Defendants 4 to 6

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated

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18.11.2023 passed in I.A.No.9 of 2021 in I.A.No.6 of 2020 in O.S.No. 106 of 2017 on the file of the Special Court (Forest Cases) , Nagercoil by allowing this Civil Revision Petition.

For Petitioner : Mr.R.Murugan

For Respondents : Mr.V.George Raja
for R.1 & R.2

COMMON ORDER

Heard the learned counsel appearing for the revision petitioner and the learned counsel appearing for the respondents 1 and 2.

2.The revision petitioner filed partition suit in O.S.No.106 of 2017 on the file of Special Court (Forest cases), Nagercoil. Copy of the plaint has been enclosed in the typed set of papers. Counter claim has been filed by D.2. The suit property belonged to late A.Sahul Hameed. The plaintiff / S.Ali Akbar, D.1 / S.Ahamed Abubacker @ S.A.Abubacker and D.2 / Abdul Latheef were born to A.Sahul Hameed. D.3 is the wife of the second defendant. The plaintiff filed I.A.No.6 of 2020 for amending the suit schedule. At this stage, the first defendant passed away. Hence I.A.No.8 of 2021 was filed for impleading the legal heirs

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of the first defendant. I.A.No.9 of 2021 was filed for bringing the legal heirs on record in I.A.No.6 of 2020.

3.The contesting respondents herein filed counter opposing the prayers in the Interlocutory Applications. According to them, there is a serious dispute regarding the identity of the first defendant. According to the second defendant, their elder brother S.A.Abubacker left for Malaysia way back in the year 1996 and he has not been heard of ever since. But according to the plaintiff, the first defendant came down to India and even filed written statement in this suit. It is further claimed by the plaintiff that the first defendant passed away on 17.02.2021. Copy of the death certificate issued by the local body (Thiruvithancode local Town Panchayat) has been enclosed. The second defendant states that Abubacker mentioned in the death certificate is somebody else and not his brother.

4.The Court below was of the opinion that the burden lay on the plaintiff is to prove the identity of the person deceased. In that view of the matter, Interlocutory Applications came to be dismissed. Challenging the same, these Civil Revision Petitions came to be filed.



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5.I am clearly of the view that the second defendant is adopting an obstructionist approach. It is beyond dispute that the suit property belongs to A.Sahul Hameed. During his lifetime, he executed settlement deed in favour of the first son, namely, S.A.Abubacker. S.A.Abubacker reconveyed the property in favour of A.Sahul Hameed. A.Sahul Hameed once again settled the property in favour of his son S.A.Abubacker.

6.According to the plaintiff, S.A.Abubacker executed the settlement deed settling the northern portion of the suit property in favour of the second defendant and southern portion in favour of the plaintiff. The second defendant has no independent claim over the property. His claim is traceable either to the father or to the elder brother / S.A.Abubacker.

7.In O.S.No.106 of 2017 also no relief was claimed against the first defendant. He was impleaded only as a proper party to the suit. It is well settled that in any partition suit, all the co-owners should be made as parties. According to the plaintiff, since the first defendant had given up his share, there was no need to implead him.



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8. In this view of the matter, the impugned order is sustained. The second defendant had settled the property in favour of the third defendant. Neither the first respondent nor the second respondent can raise any plea regarding non-joinder of parties in future. In other words, the plaintiff cannot be faulted for not bringing the legal heirs of the deceased D.1 on record. In other words, the parties will have to establish their rights independently.

9. With these observations in favour of the revision petitioner, these Civil Revision Petitions are dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

19.09.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
MGA

To

The Special Court (Forest Cases) ,
Nagercoil.

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G.R.SWAMINATHAN, J.

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