



C.R.P.(MD)No.322 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 28/02/2024

**CORAM**

The Hon'ble Mr.Justice **G.ILANGOVAN**

**C.R.P(MD)No.322 of 2024**

**and**

**CMP(MD)No.1467 of 2024**

V.R.Selvasekaran @ Rajangam : Petitioner/Petitioner/  
1<sup>st</sup> Defendant

Vs.

1.R.Vani : 1<sup>st</sup> Respondent/  
1<sup>st</sup> Respondent/  
Plaintiff

2.Rajakeerthana  
3.Rajeswari  
4.Seeman  
5.Ravi  
6.Santhi  
7.District Collector,  
Velu Nachiar Valagam,  
Dindigul District.

8.Sub Registrar,  
Natham,  
Dindigul District.

9.Thasildar,  
Natham Taluk,  
Natham,  
Dindigul District.

: Respondents 2 to 9/  
Respondents 2 to 9/  
Defendants 2 to 9

**PRAYER:-**Civil Revision Petition has been filed under Article 227 of the Constitution of India to pass an order setting aside the order dated 04/01/2024 passed in IA No. 5 of 2022 in OS No.324 of 2021 by the Additional District Court, Dindigul.



WEB COPY



C.R.P.(MD)No.322 of 2024

For Petitioner : Mr.S.Anand Chandra Sekar  
for M/s.Sarvabhauman Associates

For 1<sup>st</sup> Respondent : Mr.K.R.Laxman

For R7 to R9 : Mr.A.Sivanu Pandian  
Government Advocate (Civil)

### **O R D E R**

This civil revision petition has been filed seeking to set aside the order, dated 04/01/2024 passed in IA No. 5 of 2022 in OS No.324 of 2021 by the Additional District Court, Dindigul.

#### **2.The facts in brief:-**

The suit in OS No.324 of 2021 is filed by the plaintiff namely R.Vani, the first respondent herein seeking the relief of partition and separate possession and other declaratory relief and injunction. The defendant appeared and filed written statement. During the trial process, an application was taken out by the first defendant namely the petitioner herein to strike off the plaint. That came to be dismissed.

3.Against which, this civil revision petition is preferred by the first defendant.



C.R.P.(MD)No.322 of 2024

WEB COPY

4.In the suit, the plaintiff has stated that the first defendant namely the petitioner herein is the father. The defendants 4 to 6 are the brothers of the first defendant. The suit properties are ancestral in nature. Raman Ambalam is the father of the first defendant and the defendants 4 to 6. After the death of Raman Ambalam the properties devolved upon Valan, who is the father of the plaintiff and the first defendants and defendants 4 to 6. Valen was the kartha of the joint family. He also purchased some parties for joint family benefit. The first defendant was not taking care of the family. The family properties in an appropriate manner. The income from the joint family properties were not shared among the sharers. The first defendant sold some of the properties illegally to the third defendant. When the plaintiff demanded partition of the properties, the first defendant refused.

5.That was resisted by the first defendant stating that the plaintiff is not his daughter the suit properties are not the joint family properties. Some of the properties mentioned in the plaint are the separate properties of the first defendant and the second defendant. The properties originally belonged to the grand father namely Raman Ambalam, it devolved upon the other legal heirs.



C.R.P.(MD)No.322 of 2024

WEB COPY

6.The fourth defendant filed OS No.447 of 1999 seeking partition and preliminary decree was also passed. No final decree application is taken out so far.

7.The plaintiff mother is one Dhanam @ Dhanalakshmi. During her tender age, the marriage was performed between the first defendant and Dhanalakshmi. Difference of opinion arose between them, there was a customary divorce between them on 10/12/1978. Later the first defendant married one Kalyani. The second defendant born through her and Kalyani died on 31/03/2019. Some other facts mentioned in the petition, which are not relevant for our consideration.

8.So this contention on both sides shows that it is a simple suit for partition, in which the paternity of the plaintiff is disputed by the first defendant. Apart from that, it is also stated that the 4<sup>th</sup> defendant already filed a suit for partition and preliminary decree was passed.

9.In the factual background, the first defendant filed the impugned petition stating that in the suit filed by the 4<sup>th</sup> defendant in OS No.488 of 1977, the plaintiff namely Pornam and others were parties.



C.R.P.(MD)No.322 of 2024

Suppressing the above said only, the present suit is filed. The suit is barred by the principle of res-judicata and relitigation. Suppression of facts and limitation.

10.That was resisted by the plaintiff by filing counter. That came to dismissed by the trial court by order, dated 04/01/2024 stating that the question of res-judicata cannot be made in this matter for considering the petitioner under Order 7 Rule 11 CPC. It is also relied upon the decision of the Hon'ble Suprme Court in Keshav Sood Vs. Kirti Prudeep Sood and other in Civil Appeal No.5841/2023 dated 12.09.2023.

11.Challenging the above said this civil revision petition is preferred.

12.The learned counsel appearing for the petitioner would submit that since already preliminary decree was passed in the earlier suit, this is nothing, but an attempt on the part of the plaintiff to re-litigate the matter.

13.The learned counsel appearing for the petitioner would rely upon the judgment of this court reported in K.R.Andu Gowder Vs. Saroja (2023(6)CTC 19).



WEB COPY

14.Per contra, the learned counsel appearing for the 1<sup>st</sup> respondent would rely upon the judgment which is relied upon by the trial court reported in Keshav Sood Vs. Kirti Pradee.

15.No doubt that re-litigation is the worst process, which undermines the basis fairness of the judicial process. Multiplicity of proceedings for the very same cause cannot be permitted and encouraged. That was the main reason which was taken up by the courts. To strike off the plaint, whenever there is allegation of re-litigation and that too substance by producing enough materials that is the principle of law. Re-litigation is an abuse of process of the court. What will amount to abuse of the process of the court illustrated many times, which we need not elaborate.

16.So the point arises for consideration is very simple. Whether the plaintiff is the daughter of the first defendant born through Dhanam @ Dhanalakshmi is a matter for consideration by the trial court.

17.Apart from that, it is also on record to show that the plaintiff was not a party in the earlier suit, that was filed by the 4<sup>th</sup> defendant namely Seeman. Seeman



18. In the result, this civil revision petition stands **dismissed**. No costs. Consequently connected Miscellaneous Petition is closed.

28/02/2024

Index: Yes/No  
Internet: Yes/No  
er

To,

The Additional District Judge,  
Dindigul.



WEB COPY



C.R.P.(MD)No.322 of 2024

G.ILANGOVAN, J

er

C.R.P (MD) No.322 of 2024

28/02/2024