



C.R.P.(MD)No.999 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20.08.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.999 of 2024

and

C.M.P.(MD)No.5403 of 2024

K.Subashini

... Petitioner / Petitioner / Plaintiff

Vs.

1.K.Sivamani

2.S.Murugan

3.K.N.K.Murugan

4.S.Nadusuubulu

5.K.Anandaraj

6.R.Selvakumar

7.R.Jeyakumar

8.R.Kannaiyan

9.K.Gurusamy

10.S.Rupashini

11.S.Venmurugan



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12.N.Vijaya

13.Rajamani

14.Ranjitha

15.Sentrayan

16.Oonjalai

17.Anbarasan ... Respondents / Respondents / Defendants

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the petition and order dated 03.02.2024 passed by the learned Additional District Judge, Periyakulam in I.A.No.1 of 2023 in O.S.No.100 of 2019 dated 03.02.2024 and allow I.A.No.1 of 2023 as prayed for and thereby allow the civil revision petition.

For Petitioner : Mr.M.Jerin Mathew

For Respondents : Mr.S.Chandrasekar

ORDER

The revision petitioner herein filed O.S.No.100 of 2019 on the file of the Additional District and Sessions Judge, Periyakulam seeking the following relief.

“Therefore it is prayed that this Court may be pleased to pass a preliminary decree and judgment for partition and separate possession in favour of the plaintiff in respect of her undivided share of 6 Acres 83 Cents of lands out of the total extent of 21 Acres 60 Cents against the defendants.



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(a) by declaring the joint possession into a separate possession of the suit properties and allot the plaintiff's share of 6 Acres 83 Cents of lands separately and exclusively and put her into a separate possession for her independent exclusive enjoyment.”

Notwithstanding the manner in which the suit prayer has been couched, in essence and substance, it is a suit for partition and separate possession. It is well settled that all the parties to the suit are in the same position. While so, the revision petitioner filed I.A.No.1 of 2023 for withdrawal of the suit under Order XXIII Rule 1(4) of C.P.C. Considering the special facts and circumstances obtaining in the case, the request was rejected. After filing I.A, the plaintiff did not pursue the same. The court below took note of the plaintiff's conduct and dismissed IA. Challenging the same, this Civil Revision Petition came to be filed.

2. It is open to any plaintiff to withdraw the suit or abandon the cause of action. The revision petitioner as plaintiff wants to withdraw the suit. The petitioner's request was strongly contested by the respondents. Order 23 Rule 1(4) of CPC provides the remedy. Since it is seen that the petitioner wants to withdraw or abandon the claim, any interested defendant can always transpose himself as a plaintiff and continue the suit. The first respondent herein Thiru.K.Sivamani is interested in transposing himself. The court below is directed to transpose the first defendant K.Sivamani as plaintiff. The plaintiff



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K.Subashini will be transposed as the first defendant. It is for Subashini to participate in the proceedings or simply abandon.

3. This Civil Revision Petition is disposed of accordingly. No costs.

Consequently, connected miscellaneous petition is closed.

20.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

The Additional District Judge, Periyakulam.



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G.R.SWAMINATHAN, J.

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