



C.R.P(MD)No.1005 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.08.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P(MD)No.1005 of 2023

and

C.M.P(MD)No.4772 of 2023

Urumi Guruvappachetti,
Urumi Rengnayagammal Trust,
Represented by its Managing Trustee,
No.63/31, Govindappa Nayagam Street,
1st Street, Chennai – 1.

... Revision Petitioner/
1st Petitioner /
2nd Defendant

Vs.

1.Thangaraj

... 1st Respondent /
1st Respondent /
Plaintiff

2.Raja @ Pandiarajan

... 2nd Respondent /
2nd Respondent /
1st Defendant

3.Urumi Guruvappachetti,
Urumi Rengnayagammal Trust,
Represented by its Trustee,
Sarangarajan,
No.63/31, Govindappa Nayagam Street,
1st Street, Chennai – 1.



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4.Urumi Guruvappachetti,
Urumi Rengnayagammal Trust,
Represented by its Trustee,
Janarthna Rao,
No.63/31, Govindappa Nayagam Street,
1st Street, Chennai – 1.

5.Urumi Guruvappachetti,
Urumi Rengnayagammal Trust,
Represented by its Trustee,
Prabakar,
No.63/31, Govindappa Nayagam Street,
1st Street, Chennai – 1.

6.Urumi Guruvappachetti,
Urumi Rengnayagammal Trust,
Represented by its Trustee,
Sudhakar,
No.63/31, Govindappa Nayagam Street,
1st Street, Chennai – 1.

... Respondents 3 to 6 /
Petitioners 2 to 5/
Defendants 3 to 6

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating to the fair and decreetal order dated 10.02.2023 passed in I.A.No.4 of 2022 in O.S.No. 670 of 2004, on the file of the II Additional District Munsif Court, Tiruchirappalli and set aside the same.

For Petitioner : Mr.VR.Shanmuganathan

For Respondents : Mr.M.S.Vinodh for R.2

No Appearance for R.1, R.3 to R.6



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ORDER

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The second defendant in O.S.No.670 of 2004 on the file of II Additional District Munsif Court, Trichirappalli is the revision petitioner herein.

2.This revision petition is directed against the order dated 10.02.2023 dismissing I.A.No.4 of 2022 in O.S.No.670 of 2004 filed by the revision petitioner and the others for transposing themselves as plaintiff in the suit.

3.The learned counsel appearing for the revision petitioner reiterated all the contentions setout in the grounds of revision and called upon this Court to set aside the impugned order and grand relief as prayed for.

4.Per contra, the learned counsel appearing for the contesting respondent (second respondent) submitted that the impugned order is well reasoned and that it does not warrant interference.



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5.I carefully considered the rival contentions and went through the materials on record.

6.O.S.No.670 of 2024 was filed by Thangaraj seeking permanent injunction against Raja @ Pandiarajan. The prayer in the suit was subsequently amended and the relief of mandatory injunction was also included and for recovery of possession was subsequently added. The case of the revision petitioner is that the suit property belongs to the revision petitioner trust and that the plaintiff is their tenant.

7.The request for transposition was rejected by the Court below solely on the ground that it does not fall within the purview of Order XXIII Rule 1-A of CPC. Transposition is permitted subject to the fulfilment of the following conditions:

a) The defendant who seeks transposition is on the same page as that of the plaintiff.

b) He has a substantial question to be decided against the codefendant / defendants.

c) The suit may be withdrawn or abandoned by the plaintiff.



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The Court below came to the conclusion that none of the aforesaid conditions are fulfilled in this case. In that view of the matter, the trial for transposition came to be negated.

8.The first question that calls for consideration is whether the circumstances set out in Order XXIII Rule 1-A are exhaustive. In other words, the question that calls for consideration is whether even if the plaintiff has not withdrawn or abandoned the suit can the sailing defendant still seek transposition.

9.The learned counsel appearing for the revision petitioner draws my attention to the decision reported in ***AIR 2005 KARNATAKA 84 (Irapawwa @ Irawwa & Others v. Channabasawwa & Others)***. It has been observed therein that transposition can be made to do complete justice between the parties and to avoid multiplicity of proceedings. In this case, the plaintiff claims that he is a tenant under the revision petition trust in respect of the suit property. The contesting respondent herein (D1) asserts that the suit property belongs to him and not to the revision petitioner trust. Thus the revision petitioner has a substantial



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question to be decided against the second respondent herein (D1). The plaintiff and the revision petitioner trust are on the same page. Only avoid multiplicity of proceedings, respectfully following the ratio laid down by the Hon'ble Karnataka High Court, I set aside the impugned order and permit the transposition of the revision petitioner and its trustees.

10.The learned counsel appearing for the contesting respondent draws my attention to the decision reported in ***AIR 1969 PATNA 215 (Bhagwati Prasad Bhagat & Others v. Mt.Pahil Sundari & Others)***. It has been held therein an application for transposition to the category of plaintiff implies that the sailing defendant is willing to adopt the plaint. Permitting the transposition would not mean that the revision petitioner and its trustees can subsequently seek to amend the pleadings. They will have to sail on the plaint originally filed by the plaintiff. The transposition will take effect from the date of filing of I.A.No.4 of 2022 and will not relate back to date of institution of the suit.



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11.This Civil Revision Petition is allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

30.08.2024

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

To

II Additional District Munsif Court,
Tiruchirappalli.



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G.R.SWAMINATHAN, J.

MGA

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