



C.R.P(MD)No.786 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.06.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.786 of 2019

and

C.M.P(MD)No.4853 of 2019

C.Dharageswari

... Petitioner/9th Respondent
11th Defendant

Vs.

1.M.Kaliammal

... Respondent/Petitioner
Plaintiff

2.G.Panchavarnam

3.M.Deivarani

... Respondents/Petitioners/
Defendants 5 & 6

4.P.Thangarasu

5.Angammal

Santhavezhiyan (late) (Died)

6.Thangavelu

7.Kumar

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8.Parvathi

9.Parameshwari

10.Rathika

11.Velammal

12.Pandi

13.Savunthu

14.Saranya

15.Minor Sarathkumar

16.Minor Saravanakumar

... Respondents/Respondents
Defendants

*(Respondents 15 and 16 minors represented
through their mother and guardian
Velammal)*

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order, dated 13.02.2019 made in I.A.No.943 of 2018 in O.S.No.28 of 2012 on the file of the District Munsif Court, Ramanathapuram.

For Petitioner : Mr.I.Pinaygash

For R-1 to R-4,
R-6, R-8,
R-9 to R-14 : No appearance



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ORDER

The present Civil Revision Petition has been filed by eleventh defendant in O.S.No.28 of 2012 challenging the order passed in I.A.No. 943 of 2018, wherein the defendants 5 and 6 were permitted to get themselves transposed as plaintiffs 2 and 3 in a suit for partition.

2. The first respondent herein had filed the above suit for partition and separate possession. Pending suit, the defendants 5 and 6 were set *ex parte*. The plaintiff's side evidence was closed and the case was posted for the cross-examination of D.W.1. At that stage, plaintiff filed I.A.No. 943 of 2018 to transpose defendants 5 and 6 as plaintiffs 2 and 3 in the above said suit on the ground that, defendants 5 and 6 are also having share in the suit schedule property.

3. The above said application was resisted by the other defendants on the ground that, defendants 5 and 6 have already been set *ex parte* and only to get over the said position, now they are sought to be

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transposed as plaintiffs 2 and 3 in the above said suit.

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4. The Trial Court after considering the submissions made on either side has allowed the said application on the ground that, when the plaintiff is admitting the share of defendants 5 and 6, no prejudice would be caused to the other defendants by transposing defendants 5 and 6 as plaintiffs 2 and 3. Challenging the said order, the present revision petition has been filed by the eleventh defendant.

5. According to the learned Counsel appearing for the revision petitioner, defendants 5 and 6 were set *ex parte* long back. The suit is of the year 2012 and the present application for transposition has been filed in the year 2018. When the case was posted for cross-examination of D.W.1., the defendants 5 and 6 have not filed any application to set aside the *ex parte* order but the present application has been filed only by the plaintiff to transpose defendants 5 and 6 as plaintiffs 2 and 3. This has been filed only to drag on the proceedings and to get over the order in which, defendants 5 and 6 have been set *ex parte*.



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6. Though the respondents in the revision petition have been served and their names are printed in the cause-list, there is no appearance either in person or through Counsel.

7. Considering the above said facts, merely because the plaintiff admits the share of some of the defendants, they need not be transposed as plaintiffs. There is no allegation on the side of the defendants 5 and 6 that the plaintiff is colluding with the other defendants or the plaintiff is attempting to withdraw the suit. Only in such circumstances, defendants 5 and 6 could transpose themselves as plaintiffs. That apart, the defendants 5 and 6 have not made any attempt to transpose themselves as plaintiffs. This application filed by the plaintiff to transpose defendants 5 and 6 as plaintiffs 2 and 3 is clearly a method to get over the order of *ex parte* order. Therefore, the Trial Court was not right in allowing the said application.



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8. Considering the above said facts, the order passed by the Trial Court in I.A.No.943 of 2018 in O.S.No.28 of 2012 is hereby set aside. Hence, this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

05.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The District Munsif Court,
Ramanathapuram.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

Order made in
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