



C.R.P(MD)No.1369 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 10.09.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P(MD)No.1369 of 2024

and

C.M.P(MD)No.8018 of 2024

1.Vasim Raja

2.Jahir Niyas

... Petitioners / Petitioners /
Third Parties / Proposed
Respondents 92 & 93

Vs.

1.Janab P.C.A.Mohammed Ibbrahim (Died)

2.P.C.A.Abdul Ajees (Died)

3.P.C.A.Mohammed Jabbar (Died)

4.Alima (Died)

5.M.Mohammed Rabeek

6.M.Rajiya

7.Ayusharahina

8.Mohammed Sahabudeen

1/15



C.R.P(MD)No.1369 of 2024

9.Fathima Rajana

10.Parishabeevi

11.A.Sabeer Ahamed

12.A.Nasir Ahamed

13.A.Nasir Moideen

14.Ayushabeevi

15.Alavudeen

16.A.Mohammed Hussain

17.P.C.A.Abdul Salam (Died)

18.Badurunnisha (Died)

19.Ummal Hasanath (Died)

20.Ashmabeevi

21.Janab.Habeeb Rahman

22.Rameelabeevi

23.Abdul Hameed

24.Samsunisha Beevi (Died)

25.Julaihabeevi (Died)

26.Thajunisha Bibi

27.Noorjahan (Died)

2/15



C.R.P(MD)No.1369 of 2024

28.Jubaithabeevi

29.Asiabibi

30.Abdulkasim

31.Pappammal

32.Janab.Khajamoideen (Died)

33.Mymoonbeevee

34.Janab.Kaliloor Rahman

35.Janab.Mohammed Farook

36.Jubaithabibi

37.Janab.Mohammed Sharif

38.Kairunnisha Begum

39.Thajudeen

40.Junathunisha Begum

41.Kathijabeevi

42.Aminabeevi

43.Shajahan (Died)

44.Sabirabeevi (Died)

45.Jawaharnisha (Died)

46.Basheera Begum

3/15



C.R.P(MD)No.1369 of 2024

47.Ayushabeevi

48.S.A.Habeeb Rahman

49.S.A.Abdul Rasheeth

50.S.A.Sulthan Ibrahim

51.S.A.Jamal Mohammed

52.S.A.Ayusha

53.S.A.Khaja Moideen

54.Salihabeevi (Died)

55.Fathimabeevi

56.Abdulkani

57.Bowjiya Begum

58.Mohammadhali (Died)

59.Aarifabegum

60.Habeebunisha Begum (Died)

61.Mohammed Farook

62.Sowkathali

63.Julaithabegum

64.Saprooth Begum

65.Mumthaj Begum (Died)



C.R.P(MD)No.1369 of 2024

66.Sarammal

67.Ahamed Sait

68.Jabarullah

69.Jamal Mohammed

70.Akbar Ali

71.Mohammed Iliyas

72.Arifa Begum

73.Kaliloor Rahman

74.Ayushabeevi

75.Mohammed Sirajudeen

76.M.Jamanbegum

77.A.Mohammed Sigabudeen

78.S.Akilabegum

79.Junaithaparveen

80.Jaithoonbanu

81.A.Habeeb Rahuman

82.A.Mujibur Rahuman

83.M.Fathima Begum

84.J.Amina Parveen

5/15



C.R.P(MD)No.1369 of 2024

85.A.Kaleel Ahamed

86.Samsabegum

87.Mohammed Thowbig

88.Sulthan Thajun

89.Mohammed Tharish

90.Thamimul Ansari

91.A.Sheik Abdullah

92.Syed Ibrahim

93.Asifmoideen

94.A.Mohammed Ismail

95.M.Sabura Begum

96.M.Mohammed Iliyas

97.Sumaiah Begum

98.M.Hajrammal

99.M.Syed Abuthahir

100.A.Syed Mohammed

101.Mohammed Jiyavudeen

102.Mohammed Farook

103.Jahir Ali

6/15



C.R.P(MD)No.1369 of 2024

104.Mujibur Rahuman

105.Ubaidur Rahuman

106.Mohammed Yasin

107.Aminabegum

... Respondents / Respondents /
Respondents / Defendants /

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Ex-Order and Fair Order dated 14.08.2023 made in I.A.No.500 of 2022 in I.A.No.43 of 2018 in O.S.No. 1 of 2012 on the file of the Sub Court, Vedasandur and allow the above Civil Revision Petition.

For Petitioner : Mr.K.Govindarajan
for Mr.J.Lawrence

For Respondents : R.1 to R.4, R.17 to R.19, R.24, R.25,
R.27, R.32, R.43 to R.45, R.54, R.58,
R.60 & R.65 – Died

Mr.Mohammed Athiff
for Mr.C.Narendran
for R.5, R.7 to R.9, R.28 to R.31, R.46,
R.47, R.59, R.69 to R.79, R.81 to R.91,
R.93, R.96, R.98 to R.105

Mr.M.Kalifullah for R.51, R.55 & R.57

R.11, R.13 to R.16, R.39, R.49, R.53,
R.95, R.97, R.107, R.35, R.40 &
R.56 – No Appearance



WEB COPY



C.R.P(MD)No.1369 of 2024

R.20, R.21, R.33 to R.35, R.37
& R.42 – Addressee Left

R.22, R.23, R.26, R.36, R.40, R.52,
R.61 to R.63 – No such person in this
address

R.6, R.10, R.38, R.41, R.64, R.67, R.68,
R.80, R.94 – Deceased

R.48 – Missent

R.12 – Addressee cannot be located

R.42, R.61 to R.63 – Left

R.52 & R.68 – Unclaimed

R.92 – Out of station

R.106 – Proof not filed

R.66 & R.67 – Addressee absent

R.50 & R.106 – Insufficient address

R.56 – Service awaited

ORDER

Heard both sides.

2.The case on hand raises the question as to whether the subsequent purchaser is entitled to get himself impleaded in final decree proceedings in a suit for partition.



C.R.P(MD)No.1369 of 2024

3.O.S.No.69 of 1983 was instituted before the Sub Court, Dindigul seeking partition and separate possession. Preliminary decree was passed on 29.11.2013. Defendants 50 to 58 filed A.S.No.19 of 2014 on the file of Principal District Judge, Dindigul. It was dismissed on 19.07.2017. The appellants filed S.A(MD)No.175 of 2021 before this Court. It was dismissed on 18.03.2021.

4.I.A.No.43 of 2018 for passing final decree was filed by the plaintiffs / legal heirs. In the said final decree proceedings, I.A.No.500 of 2022 was filed by the revision petitioners herein. The revision petitioners herein purchased the undivided shares allotted to various defendants. The revision petitioners claim 567.89 shares out of 780 shares. The Court below dismissed the IA on the ground that they had purchased the undivided share after passing of the preliminary decree and that they are not necessary parties in the final decree proceedings. This order was passed on 14.08.2023. Questioning the same, this Civil Revision Petition has been filed.

5.The learned counsel for the revision petitioners reiterated all the contentions set out in the grounds of revision and called upon this Court to set aside the impugned order and grant relief as prayed for.

9/15



C.R.P(MD)No.1369 of 2024

WEB COPY

6.Per contra, the learned counsel for the plaintiffs submitted that the purchase by the revision petitioners is hit by *lis pendens* and that final decree to be passed will be binding on the petitioners herein and that they are not necessary or proper parties. The learned counsel relied on the decisions reported in **2001 (1) CTC 19 (Bakthavatsalam Vs Anjapuli & Others)** and **2006 (3) CTC 543 (Nachammal Vs Lavangammal)** and an unreported decision rendered in C.R.P.No.626 of 2018 (Malar Vs Govindasamy & Others) on 30.07.2020. No doubt all the aforesaid three decisions support the contentions advanced by the learned counsel for the plaintiffs. But there is a factual distinction. In the cases relied on by the learned counsel for the plaintiffs, the party seeking to implead himself in the final decree proceedings set up rival title over the suit property. In the case on hand, there is no such rival claim. All that the revision petitioners seek to do is to step into the shoes of their vendors. Admittedly, the revision petitioners' vendors had been allotted some shares in the suit property. If the final decree proceedings, the property will have to be divided by the metes and bounds and appropriate allotment made. All that the revision petitioners seek is that whatever



C.R.P(MD)No.1369 of 2024

share that is going to be allotted in favour of their vendors should be allotted in their favour.

7.I find this request to be eminently fair and reasonable. In fact a learned Judge of this Court in the decision reported in **2016-3-LW 283 (Suguna Vs Subramani & Others)** had held that subsequent purchaser has to be impleaded as a party in the final decree application. The learned counsel had relied on the decisions of the Hon'ble Supreme Court reported in **(2005) 11 SCC 403 (Amit Kumar Shaw Vs Farida Khatoon)**. The learned counsel for the revision petitioners draws my attention to the decision reported in **(2009) 13 SCC 179 (Maddineni Koteswara Rao Vs Maddineni Bhaskara Rao & Another)**. Paragraphs 18 and 19 of the said decision are as follows:

“18. It is well settled that a suit for partition stands disposed of only with the passing of the final decree. It is equally settled that in a partition suit, the court has the jurisdiction to amend the shares suitably, even if the preliminary decree has been passed, if some member of the family to whom an allotment was made in the preliminary decree dies thereafter. The share of the deceased would devolve upon other parties to a suit or



WEB COPY



C.R.P(MD)No.1369 of 2024

even a third party, depending upon the nature of the succession or transfer, as the case may be. The validity of such succession, whether testate or intestate, or transfer, can certainly be considered at the stage of final decree proceedings.

19. An inference to this effect can suitably be drawn from the decision of this Court in the case of Phoolchand v. Gopal Lal (AIR 1967 SC 1470). In that decision, it was observed as follows:

There is nothing in the Code of Civil Procedure which prohibits the passing of more than one preliminary decree if the circumstances justify the same and that it may be necessary to do so particularly in partition suits when after the preliminary decree some parties die and shares of other parties are thereby augmented...

it would in our opinion be convenient to the court and advantageous to the parties, specially in partition suits, to have disputed rights finally settled and specifications of shares in the preliminary decree varied before a final decree is prepared. If this is done there is a clear determination of the rights of the parties to the suit on the question in dispute and we see no difficulty on holding that in such



WEB COPY



C.R.P(MD)No.1369 of 2024

cases there is a decree deciding these disputed rights, if so, there is no reason why a second preliminary decree correcting the shares in a partition suit cannot be passed by the court.”

It was held that the suit for partition would stand disposed of only in passing of the final decree and that the share of the person in whose favour the preliminary decree has been passed would devolve upon either his natural legal heirs or in favour of even third party to whom undivided share has been alienated.

8.I am therefore more than satisfied that the revision petitioners are necessary and proper party to the final decree petition. Of course, their role is rather limited. Their impleadment is only formal in nature so as to avoid future litigation. Whatever share is proposed to be allotted in favour of the vendors will have to be allotted in favour of the revision petitioners in the final decree itself. Only to protect the rights, they are impleaded. It is reiterated that they cannot agitate on the merits of the matter. The impugned order is set aside.



C.R.P(MD)No.1369 of 2024

9.This Civil Revision Petition is allowed accordingly. There shall

be no order as to costs. Consequently, connected miscellaneous petition is closed.

10.09.2024

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

To

The Sub Court,
Vedasandur.



WEB COPY



C.R.P(MD)No.1369 of 2024

G.R.SWAMINATHAN, J.

MGA

C.R.P(MD)No.1369 of 2024

10.09.2024