



C.R.P.(PD) (MD).No.538 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD)No.538 of 2018

and

C.M.P(MD) No.2349 of 2018

S.Jabar Sadeek
S/o.Sheik Mansoor,
Door No.55, Akbar Street,
Melapalayam, Palayakmottai Taluk,
Tirunelveli District.
Represented through his Power Agent,
O.M.Parithpukari,
S/o. Mohamed Yusuf,
Door No.83, Akbar Street,
Melapalayam,
Tirunelveli – 5.

... Petitioner/Petitioner/Plaintiff

-vs-

1.V.T.Syed Masood (Died)

(Memo dated 10.06.2024 presented before the Court on 13.06.2024, is recorded, as R1 died as Respondents 2, 5, 9, 10, 19, 20 and 21, who are already on record, are recorded as Legal heirs of the deceased R1, vide Court order dated 13.06.2024 made in C.R.P(MD) No.538 of 2018)

2. V.T.S.Mohamed Ithrish



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3. C.Chellathurai
4. D.Anthony Pitchaikani
5. A.Saithabanu
6. A.Ibrahim
7. B.Sankar
8. A.Beemarkani
9. S.Janusiya
10. J.Rahilabegam
11. A.Deva Asirvatham
12. A.Alphones
13. Edward Rathinasekar
14. S.Nagoorkani
15. E.Subbulakhsmi
16. R.Chitra
17. A.Hahir Hussain
18. T.Rajan Vasantharajan
19. S.Ayisha Beevi
20. S.Absarhan
21. B.Benazir Nisha



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22. P.Kinggir Sureshbabu

23. I.Pinlazar

24. S.Ramalakshmi

25. P.Pandurangan

... Respondents 1 to 25/
Respondents 1 to 26/
Defendants

26. Selvin Rajakumar

27. B.Sheebabets

28. V.S.Saitha Banu

29. T.Rabinsan

30. Anthony Anand

31. Johnsi Rathinakumari

32. N.P.Justinarraj

33. D.James Palgan Anand

34. V.Therasal

(Memo dated 10.06.2024 presented before the Court on 13.06.2024, is recorded, to the effect that issuance of notice to respondents 7, 12, 14, 16, 18, 23, 24, 25, 27, 30, 31, 32 and 34 is dispensed with, they are remained exparte before the trial Court, vide Court order dated 13.06.2024 made in C.R.P(MD) No.



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35. J.Benitta Mary

36. S.Thomas Xavierraj
S/o. S.Singarayan,
Nadutheru,
Iruthayakulam,
Vikkiramasingapuram Post,
Ambasamuthiram Taluk,
Tirunelveli District.

Represented through his
Power Agent,
Y.Steephan,
S/o.M.Yagappan,
Door No.5, Shanthi Mahal,
Xavier Colony,
Melapalayam Post,
Palayamkottai Taluk,
Tirunelveli District.

37. A.Gnanaselvan

38. Meri Anthony Rosalint

39. A. Selin Hemalatha

40. K.Thanaseeli

41. K.Vincent

42. S.Joseph

43. J.Thangamalarvizhi

44. S.Jesintha



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45. Loosikiruba

46. Sinthya

... Respondents 26 to 46/
Respondents 26 – 46/
Proposed Defendants 26 to 46

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, as against the fair and decreetal order in I.A.No.189 of 2017 in O.S.No.212 of 2011 passed by the learned Additional Sub Judge, Tirunelveli, dated 18.01.2018.

For Petitioner : Mr.K.P.Narayanakumar

For Respondents : Mr.S.C.Herold Singh
for R2, R10, R17 and R19

: Mr.K. Jeyamohan – for R.26
: Mr.R.Pon Karthikeyan – for 15
: Mr.V.Rajiv Rufus – for R39

: Mr.I.Robert Chandrakumar
for R40 and R41

: No appearance – R3, R5, R6, R8, R9,
R13, R20, R21, R22, R26, R28, R29,
R33, R35 to R38 and R42 to 46

ORDER

The present Civil Revision Petition has been filed by the petitioner/
plaintiff in O.S.No.212 of 2011, on the file of the Additional Sub Court,
Tirunelveli, challenging the order of dismissal of an application filed under



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Order 1 Rule 10(2) of C.P.C.

2. The plaintiff had filed the above said suit for the relief of partition and separate possession of 1/4th share in the suit schedule property. Originally the said suit was filed as against 25 defendants. Pending the suit, the plaintiff had filed an application in I.A.No.189 of 2017 to implead the proposed parties 26 to 46 as defendants in the suit.

3. According to the plaintiff, they purchased the property from the co-sharers prior to the suit or pending suit. Some of them are beneficiaries under settlement deeds executed by the co-sharers. Hence, they are necessary parties. This application was rejected by the trial Court, on the ground that the document under which the proposed parties are claiming have not been filed. The trial Court has further held that the plaintiff has not filed the genealogy or the reason for filing such an application belatedly after the suit was listed in the special list. The trial Court further found that the similar application in I.A.No.686 of 2016 has been dismissed as withdrawn. In such circumstances, the application is not maintainable. With the above said observation, the trial Court has dismissed the impleading application. Challenging the same, the



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present Civil Revision Petition has been filed.

4. According to the learned counsel appearing for the revision petitioner, the proposed parties are the beneficiaries under various documents from the co-sharers. Some of them are third parties to the family who have purchased undivided sharers from the co-sharers. Therefore, they are necessary parties.

5. Per contra, the learned counsel appearing for one of the proposed parties has contended that this application has been filed belatedly only to drag on the proceedings. According to him, they have purchased the property prior to the suit. The plaintiff was aware of the said sale, however, he has filed this application nearly six years after the filing of the suit. Hence, he prayed for dismissing this Civil Revision Petition.

6. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.



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7. The impleading petition has been filed in a suit for partition. It is the contention of the plaintiff that the proposed parties are beneficiaries of sale deeds or settlement deeds either prior to the suit or pending suit. In such circumstances, they are necessary parties.

8. A perusal of the order in I.A.No.686 of 2016 reveals that it has been dismissed with liberty to file a fresh application. Therefore, the order of the trial Court is not legally sustainable and therefore, the order passed in I.A.No. 189 of 2017 is hereby set aside and the impleading application stands allowed.

9. All the served proposed parties are directed to file a written statement on or before **06.09.2024**. The parties on either side are directed to cooperate for expeditious trial. Considering the fact that the suit is of the year 2011, the trial Court is directed to dispose of the suit on or before **31.03.2025**.

10. Accordingly, this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently connected Miscellaneous Petition stands closed.



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

1. The Additional Sub Judge,
Tirunelveli.



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R.VIJAYAKUMAR,J.

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