



C.R.P.(MD)No.1764 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 12.09.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.1764 of 2021

and

C.M.P.(MD)No.9396 of 2021

1.Saraswathi

2. Nithiya

... Petitioners/Respondents 5 & 7/
Defendants 1 & 3

Vs.

1.K.Ashok Kumar

... 1st Respondent/Petitioner/5th Plaintiff

2.Kalyanasundaram

3.Meena

... Respondent 2 & 3/Respondents 1 & 2/
Plaintiffs 1 & 2

4.Shanthi

5.Savithiri

... Respondents 4 & 5/Respondents 3 & 4
Plaintiffs 3 & 4

6.Manimozhi

... 6th Respondent/6th Respondent/
2nd Defendant

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records relating to the impugned fair and decreetal order dated 23-07-2021, made in IA.No.91 of 2019 in O.S.No.103 of 2015 on the II Additional District and Sessions Judge, Thanjavur, set aside the same and allow the Civil Revision Petition.



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For Petitioners : Mrs.J.Padhmaavathi Devi

For Respondents : Mr.D.L.Dilipan Pandian for R1
Mr.G.Karnan for R2 to R5

* * *

ORDER

Heard both sides.

2.The defendants 1 and 3 in O.S.No.103 of 2015 on the file of the II Additional District and Sessions Judge, Thanjavur are the revision petitioners herein. They questioned the order dated 23.07.2021 passed by the Court below permitting the fifth plaintiff to transpose himself as a defendant.

3.The suit on hand is for partition. The Hon'ble Supreme Court in the decision reported in *(1983) 2 SCC 132 (Bhagwan Swaroop Vs. Mool Chand)* held that in a suit for partition, any of the party can claim transposition from the category of the defendant to the category of the plaintiff and vice versa. The decision reported in *1984 (Supp) SCC 631 (Dr.P.Nalla Thampy Thera Vs. B.L.Shanker)* is also to the same effect. This has been followed in the recent decision reported in *2022 LiveLaw (SC) 193 (Azagar Barid (D) Vs. Mazambi*



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@ Pyarembi). The order passed by the Court below cannot be faulted. The civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

12.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
ias

To:

The II Additional District and Sessions Court,
Thanjavur.



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G.R.SWAMINATHAN, J.

ias

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