



C.R.P.(MD)No.2103 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 19/01/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) No.2103 of 2023

and

CMP (MD) No.10609 of 2023

Mathiyazhagan : Petitioner/Petitioner/
Plaintiff
Vs.
1.Marthandan
2.Manirethinam
3.Saravanaraja
4.Lalitha
5.Valarmathi
6.Neelavathi : Respondents /Respondents/
Defendants

PRAYER:- Civil Revision Petition has been filed under Article 227 of the Constitution of India, to aside the fair and decreetal order passed by the III Additional District Judge, Thanjavur @ Pattukottai in IA No.243 of 2022 in O.S No.38 of 2017, dated 07/01/2023.

For Petitioner : Mr.N.Balakrishnan
For R1 and R2 : Mr.Siva Ilayaraja
For R3 and R4 : No appearance

O R D E R

This civil revision petition has been filed seeking to set aside the fair and decreetal order passed by the III Additional District Judge, Thanjavur @ Pattukottai in IA No.243 of 2022 in OS No.38 of 2017, dated 07/01/2023.



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2. The facts in brief:-

(i) A suit in O.S No.38 of 2017 was filed by this petitioner as plaintiff seeking the relief of partition and separate possession of the property mentioned in the plaint.

(ii) After filing the suit, written statement was filed, issues were framed and the trial also started.

(iii) After completion of the recording of evidence, the suit was posted for pronouncing judgment. At that time, a petition was taken out by the petitioner in IA No.243 of 2023 seeking a direction to delete the properties mentioned in the written statement filed by the defendants 1 to 3 stating that those properties are not amenable for partition.

3. That came to be dismissed by the trial court, on 07/01/2022. Against which, this revision has been preferred.

4. Heard both sides.

5. As mentioned earlier, the suit was filed by the petitioner stating that the property mentioned in the



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plaint schedule as 'A' numbering about 20 items are amenable for partition, in which he is entitled for 1-1/2 share. So far as the 'B' schedule is concerned, it is a separate property, in which the defendants have no right and it is not amenable for any partition.

6. Written statement was filed by the defendants 1 to 3. After framing issues, trial started. At that time, this petition came to be filed by the petitioner with the following averments:-

(i) The plaint 'B' schedule was purchased by him from his own income and he is in enjoyment of the same. So the respondents have no right over the property mentioned in 'B' schedule. The respondents try to disturb his possession. So he gave a complaint, on 14/05/2017 before the concerned Police Station in respect of the property in Survey No.13/2 measuring about 2.33 Acres and 3.65 Acres in Survey No.14/2 was purchased by his wife and it is her self-acquired properties, in which neither the petitioner nor the respondents are having any right.

(ii) It is further stated by him that the properties mentioned in para 4 of the written statement filed by the defendants 1 to 3 contains the properties, which are



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self-acquired properties of this petitioner. So the properties mentioned in the written statement in para 4 should not be included in the suit.

7.That came to be dismissed by the trial court. Against which, this revision has been preferred.

8.Reading of the order passed by the trial court shows that originally issues framed, on 08/01/2018. Additional issues, on 27/08/2019. Arguments were heard, After closing of the evidence, posted for pronouncing judgment. At that time only, the petition came to be filed. In spite of the fact that in the written statement filed by the defendants 1 to 3, they have mentioned 31 items in the written statement stating that those properties were not included in the plaint. So additional issues were framed as to whether the suit is bad for partial partition. In spite of that, no amendment application was filed by this petitioner. Instead, he filed the petition not to include those properties for partition.

9.It is a suit for partition. It is well principle of law that all the parties should be treated as plaintiffs and the defendants. So the properties, which



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are amenable in the partition must be included in the suit, otherwise the plaint/suit will become for non-joinder of the properties namely will be bad for partial partition.

10. Whether the properties mentioned in the written statement are self-acquired properties of this petitioner or the properties purchased from the joint family income is a matter for consideration by the trial court. Now evidence is completed, both sides arguments heard and now posted for judgment.

11. Fearing some adverse orders and findings, the petition came to be filed by the petitioner, which is not entertainable and has rightly dismissed by the trial court.

12. In support of his contention, the learned counsel appearing for the petitioner would rely upon the judgment reported in the case of **Rajendran and another vs. Rahakrishnan and two others (2023(6) CTC 732)** for the purpose of argument that the properties standing in the name of the family members cannot be treated as family properties purchased out of the joint family income; Even the Benami Transactions (Prohibition) Act, 1988 barred



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making of such pleading. I am not going into that aspect now. It is a crucial jurisdiction of the trial court to decide the issue.

13.So, I find no illegality or irregular in the order passed by the trial court.

14.In the result, this civil revision petition is **dismissed. No costs.** Consequently connected Miscellaneous Petition is closed.

19/01/2024

Index:Yes/No
Internet:Yes/No
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To,

III Additional District Judge,
Thanjavur @ Pattukottai.



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G.ILANGO VAN, J

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