



C.R.P.(MD)No.1612 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 11.01.2024

PRONOUNCED ON: 02.02.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.1612 of 2017

and

C.M.P.(MD)No.9107 of 2017

Madamkumar : Revision Petitioner / Petitioner

Vs.

1.Padmavathi
2.Sivakumar
3.Jeyachandran(died)
4.Jegadeeswawri : Respondents/Respondents

5.Sangavi
6.Pranesh : Respondents

(Respondents 5 and 6 are brought on
record as LR's of the deceased
3rd respondent, vide Court order dated
01.03.2022 made in C.M.P.(MD)No
11288 of 2021)

PRAYER:- Civil Revision Petition is filed under Article 227 of the
Constitution of India against the fair and decreetal order passed I.A.No.



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683 of 2017, in O.S.No.421 of 2010, dated 06.09.2017, on the file of the
Principal Subordinate Judge, Karur.

For Petitioner : Mr.M.Suresh

For Respondents : Mr.M.Bindran
for R.1, R.2 and R.4
: R.3 - died

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.683 of 2017 in O.S.No.421 of 2010, on the file of the Principal Subordinate Court, Karur, dismissing the petition filed under Order 8 Rule 9 C.P.C.

2. The respondents 1 to 4 as plaintiffs have filed the suit for partition of the suit properties and allotment of 1 / 4 share to the plaintiffs. Originally the suit was filed against 20 defendants and pending suit, the sixth defendant had died and hence his legal representatives were impleaded as defendants 21 and 22. It is not in dispute that the defendants 1 to 3, 7, 9, 20 to 22, by filing their written statement, are contesting the suit. When the trial was in part heard stage,



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the 20th defendant has filed the above application under Order 8 Rule 9 C.P.C., seeking permission to file the additional written statement. The respondents/plaintiffs have filed their counter statement raising serious objections. The learned Subordinate Judge, after enquiry, has passed the impugned order dismissing the said petition. Aggrieved by the order of dismissal, the 20th defendant has preferred the present Civil Revision Petition.

3. The main contention of the revision petitioner / 20th defendant is that during the cross-examination of P.W.1, she has deposed that Omanthira Moopan had left some other ancestral properties which were not yet partitioned among the legal heirs of Omanthira Moopan, that the said properties have not been included in the present suit, that when the 20th defendant was discussing with his Counsel for cross-examination of P.W.2, he came to know the above evidence of P.W.1, that since the properties belonging to Omanthira Moopan have not been included in the suit, the suit itself is bad for partial partition, that since he has not taken the said plea in the earlier written statement, he was advised to file the additional written statemet in that aspect and that no prejudice would be caused to the other side, if the additional written statement is received,



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otherwise, the 20th defendant will be seriously prejudiced, which cannot be compensated by any other means.

4. The main defence of the plaintiffs is that the 20th defendant, being the purchaser, is not entitled to raise the plea of partial partition and that since the 20th defendant has purchased a portion of the suit properties from the defendants 1 to 3, he cannot be allowed to raise such a plea.

5. It is evident from the pleadings that the revision petitioner / 20th defendant is a purchaser from the defendants 1 to 3, that the suit properties are the ancestral properties of Omathira Moopan – great grandfather of the plaintiffs 2 to 4, that the said Omathira Moopan had died leaving behind him his wife – Periyakkal, his sons – Andiyappan, Swaminathan and Maruthan, that one Malaiyalan – the eldest son of Omathira Moopan had predeceased him, that the defendants 1 to 3 are the heirs of the said Malaiyalan, whereas the plaintiffs are the heirs of Maruthan, the defendants 4 to 10 are the heirs of the said Swaminathan and that the defendants 11 to 19 are the legal heirs of the said Andiyappan.



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6. As rightly pointed out by the learned Counsel for the plaintiffs, the trial Court has rightly observed that the defendants 1 to 3 admittedly co-owners, have not raised any pleading that the said ancestral properties of Omanthira Moopan are not included in the present suit and as such, the suit is bad for partial partition. The learned trial Judge has specifically observed that the 20th defendant being a third party / alienee from the defendants 1 to 3, has no right or *locus standi* to raise the plea of partial partition.

7. The learned Counsel for the revision petitioner has relied on the judgment of this Court in ***Mariammal and another Vs. Subbuthai and others*** reported in **2013(5) CTC 49** and argued that the suit filed without including of properties belonging to the joint family is not maintainable and the relevant passages are extracted hereunder:

“27. The learned counsel appearing for the first respondent/plaintiff has contended that with regard to other properties, already a partition has been effected amongst the plaintiff and defendants 2 and 3 and since there is no dispute with regard to those properties, the same need not be included in the present Suit. In fact this Court has scanned



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the entire averments made in the plaint. No where it has been stated to the effect that amongst the plaintiff and defendants 2 and 3, partition has been effected with regard to those properties. Therefore, it is quite clear that the present Suit has been instituted only to attack the sale effected by the father of the plaintiff under Ex.B3 and since the remaining properties, allotted to the share of father of the plaintiff have not been included, this Court is of the view that the present Suit is really bad for partial partition.

28. The first and foremost substantial question of law is as to whether the present Suit is maintainable without including the other properties belonged to joint family. It has already been discussed on the basis of the evidence given by the plaintiff and also the averments made in the plaint and ultimately found that the present Suit has been instituted only for the purpose of attacking the sale made under Ex.B3 and therefore, the first substantial question of law settled in the present Second Appeal is decided in favour of the appellants/defendants 3 and 4.”

8. To counter this, the learned Counsel for the plaintiffs has relied on the judgment of another learned Judge of this Court in **Karuppiyah and another Vs. C.Muniyappan and others** reported in (2014)2 CTC



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706, which was referred by the learned trial Judge and the relevant passage is extracted hereunder:

“21. So far as the objection to partial partition is concerned, the said objection can be raised only by a sharer and the seventh defendant not being the co-owner, it is not open to him to take the plea. The present suit is one between the co-owner and a alienee and not really between the members of the family. Therefore, the co-owner is entitled to recover his share of the property in the schedule item and an alienee cannot contend that the suit is barred for partial partition when that right is given only to the members of the family.”

9. It is necessary to refer the judgment passed in the case of ***Maria Arulayi Vs. Anthonyal (died) and others*** reported in ***(2013)1 LW 903***, by the very same learned Judge, who passed the judgment in ***Mariammal's case*** referred above and cited by the learned Counsel for the revision petitioner and the relevant passages are extracted hereunder:

“26. Now the Court has to look into the other plea raised on the side of the contesting defendants. The other plea is that the first defendant has sold some other properties to third



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parties apart from the suit property and those properties have not been included in the present suit and therefore the present suit is bad for partial partition.

27. The learned counsel appearing for the contesting respondents/defendants have also advanced their arguments to the extent mentioned supra.

28. The learned counsel appearing for the respondents 7 to 9 has befittingly drawn the attention of the Court to the decision in Balakrishna Udayar and 3 others v. Chellammal and 9 others reported in 1998-2-L.W.414, wherein this Court held that in a suit for partition among co-owners, plea of partial partition cannot be pleaded. In the instant case, after the demise of father of the plaintiff and defendants 1 and 2, the plaintiff and defendants 1 and 2 have become co-owners. The contesting defendants have stepped into the shoes of the first defendant and therefore the plaintiff and defendants 1 and 2 are nothing, but co-owners of the suit property. Since the present suit has been instituted for the relief of partition amongst co-owners, the plea of partial partition is not entertainable as per the decision referred to supra. But the Courts below without considering the correct legal position, has also dismissed the present suit on the ground of partial partition.”



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10. Another learned Judge of this Court in ***Alagusundaram Vs. Sangan @ Sengaiah*** in S.A.(MD)No.692 of 2010, dated 04.08.2022, has specifically held that a defence on the ground of partial partition which is generally available to a co-sharer is not available to a third party purchaser and the relevant passage is extracted hereunder:

“The arguments for the respondent are made principally from a position of desperation. The suit property indisputably is an ancestral property, and it was sold entirely to the 5th defendant. The plaintiff must therefore be given his share in it. This has been the finding of the Courts below and the 5th defendant has not challenged it. The case he builds on partial partition is a belated strategy that he pressed into service without pleading it. Secondly, a suit for partial partition as between the cosharers is judicially frowned upon, not because any law forbids it, but because the Court may not be able to do complete justice to the parties during final decree proceedings, where inter se equities may have to be adjusted between the co-sharers. A defence on the ground of partial partition which is generally available to a cosharer is not readily available to a third party purchaser. The best such a purchaser of a property, on purchase from some of the co-sharers, may do, is to go for a suit partition to secure possession of a specific spot proportionate to the share he had purchased.”



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11. In the case on hand, as already pointed out, the 20th defendant is only a purchaser from the defendants 1 to 3. Considering the legal position above referred, this Court has no hesitation to hold that the 20th defendant, being an alienee, has no right to contend that the suit is bad for partial partition. More importantly, when the vendors of the 20th defendant have not chosen to raise such a plea, he cannot be allowed to raise such a defence. On considering the entire facts and circumstances and also the fact that the suit is pending from 2010 onwards, the learned trial Judge has rightly observed that the above petition came to be filed only to drag on the proceedings. Hence, the impugned order dismissing the petition filed under Order 8 Rule 9 C.P.C., cannot be found fault with and this Court is in its entire agreement with the findings of the trial Court. Consequently, this Court concludes that the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.

12. In the result, the Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed. There shall be no order as to costs. Since the suit is pending from 2010 onwards, the learned trial Judge is directed to complete the trial and



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dispose of the suit within a period of three months from the date of receipt of a copy of this order.

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NCC : Yes : No
Index : Yes : No
Internet : Yes : No

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To

1. The Principal Subordinate Court, Karur.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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