



C.R.P.(MD)No.3069 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12/02/2024

**CORAM**

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

**C.R.P (MD) No.3069 of 2023**

**and**

**CMP (MD) Nos.15856 of 2023 and 918 of 2024**

S.Mathavan : Petitioner/1<sup>st</sup> Respondent/  
Plaintiff

Vs.

1.S.Padma

2.J.Jeyam

Andal (Died)

3.Duraipandian : Respondents 1 to 3/  
Petitioners/Proposed  
Defendants 5 to 8

4.S.Rajaselvan

5.S.Vimalaathithan

6.Kula.B.Periyasamy

7.P.Rajeswari : Respondents 4 to 7/  
(Notice to the respondents Respondents 2 to 5/  
4 to 7 may be dispensed with Defendants 1 to 4  
as the petitioner has not  
seek any relief against them)

**PRAYER:-**Civil Revision Petition has been filed under Article 227 of the Constitution of India, to call for the records and set aside the fair and decreetal order dated 04/09/2023 in IA No.694 of 2018 in O.S No.71 of 2017 on the file of the District Munsif Court, Sivagangai.

For Petitioners : Mr.K.Chengiz Khan

For R1 and R2 : No appearance

For 3<sup>rd</sup> Respondent : Mr.V.Kannan

For R4 to R7 : Dispensed with



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**O R D E R**

**WEB COPY** This civil revision petition has been filed seeking to set aside the fair and decreetal order dated 04/09/2023 in IA No.694 of 2018 in O.S No.71 of 2017 on the file of the District Munsif Court, Sivagangai.

**2.The facts in brief:-**

A suit in OS No.71 of 2017 was filed by this petitioner seeking the relief of declaration and consequential injunction. Pending suit, IA No.694 of 2018 was taken out by 4 persons namely Padma, Jeyam and another Andal since deceased and one Duraipandian, to implead themselves as necessary parties in the suit. That came to be partly allowed by the trial court impleading Duraipandian as party defendant, dismissing the petition filed by Padma and others.

3.Against which, this revision has been filed by the plaintiff.

4.Heard both sides.

5.In IA No.694 of 2018, it has been stated by the petitioner that the suit property originally belongs to one Sundarajan Iyengar. His wife name was Thirumu Ammal.



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Sundarajan Iyengar and Thirumu Ammal had three children. After their death, they inherited the property and in possession. S.Padma, J.Jayan and Andal are represented through the Power Agent. On the basis of the wrong patta issued, the plaintiff and the defendants 1 to 4 claimed the property and patta proceedings were also initiated, by which, the property was restored to the original name of their mother namely Thirumu Ammal. Only during the patta proceedings, it came to the notice that without impleading the original owner, the suit is filed by the plaintiff. The suit property was sold by the power agent in favour of Duraipandian, the 4<sup>th</sup> respondent herein and Duraipandian is in possession and enjoyment of the property.

6.That petition was resisted by the petitioner stating that the property never belongs to the Sundarajan Iyengar and their legal heirs. By impersonation, they created the document. The suit filed by the plaintiffs namely Padma, Jayam and Andl in OS No.14 of 2004 was dismissed. Appeal was also dismissed. Without any basic document, they filed this petition. Apart from that other facts also mentioned in the counter. Similarly, the other respondents also got adjudicated. So after hearing the parties, the trial court thought it fit to implead



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the 4<sup>th</sup> petitioner as necessary party on the ground that he purchased the properties, on 01/07/2011 and 14/07/2011; He is also necessary party; Only in his presence, effective decree can be passed.

7.Now the learned counsel appearing for the petitioner would submit that the petitioner being the plaintiff can choose a relief against the persons, who are objecting the title and possession. He can select the person. So the petition filed by the third parties to the issue ought not to have been impleaded. He has referred the judgment of the Hon'ble Supreme Court in the case of ***Kasturi Vs. Iyyamperumal and others [(2005) 6 SCC 733]*** for the purpose of argument that the petitioner is *dominus litis*. But the Hon'ble Supreme Court would state that necessary party is one, whose presence is required either for passing effective decree or for against whom some relief is sought for.

8.The learned counsel appearing for the petitioner would rely upon the first condition stating that no relief was sought by the first respondent herein against Duraipandian. So the petitioner cannot be compelled to add him as necessary party.



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9. But the learned counsel appearing for 3<sup>rd</sup> respondent/Duraipandian would submit that there is rival claim over the suit property. Who is Thirumu Ammal is the only point to be decided by the trial court. He would be referring to the order passed by the DRO in the patta proceedings, dated 20/07/2018. In the conclusion portion of the order, DRO has stated that who is the real legal heir of Thirumu Ammal must be decided by the civil proceedings. So by referring all these findings, the learned counsel appearing for 3<sup>rd</sup> respondent would submit that unless his presence is available, no effective decree can be passed.

10. Reading of entire pleadings of both parties will indicate that both are claiming rival claim over the property. The learned counsel appearing for the petitioner would submit that absolutely Duraipandian is necessary party for binding adjudication, he must also be impleaded. Even though, Duraipandian got right to file a separate suit, that will amount to multiplicity of proceedings.

11. So, for the purpose of effective adjudication of the issue, I am of the considered view that Duraipandian's presence also very much required. But the



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fact remains that he is only a purchaser from the legal heirs of Thirumu Ammal. But their application was dismissed. They can give evidence during the course of trial. Unless they are examined, the real ownership cannot be decided.

12.With the above said observation, I find that no illegality or irregularly in the order passed by the trial court.

13.In the result, this civil revision petition is **dismissed.** No costs. Consequently, connected Miscellaneous Petitions are closed.

12/02/2024

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

The District Munsif,  
Sivagangai.



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G.ILANGO VAN, J

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