



C.R.P(MD)No.3354 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

**C.R.P(MD)No.3354 of 2023
and
C.M.P.(MD)No.17363 of 2023**

Palanisamy ... Petitioner/3rd Respondent/3rd Defendant

vs.

1.Chinnammal @ Indragandhi ... 1st Respondent/Petitioner/Plaintiff

2.Anjalai

3.Sivapakkiyam

4.Muthukannu

5.Pambaiya Udayar

6.P.T.Sebasthiyan

7.Sesumary ... Respondents 2 to 7/Respondents 1, 2 and 4 to 7/
Defendants 1, 2 and 4 to 7

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order passed by the learned Additional District Judge, Pudukottai in I.A.No.156 of 2021 in O.S.No.75 of 2016, dated 26.06.2023.

For Petitioner : Mr.N.Kamesh

For Respondents : No Appearance for R1, R3, R5 to R7

Mr.P.Pandiarajan for R2 & R4



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ORDER

The Civil Revision Petition is filed aggrieved by the order dated 26.06.2023 made in I.A.No.156 of 2021 in O.S.No.75 of 2016 on the file of the learned Additional District Judge, Pudukottai.

2.By the said order, the application filed by the plaintiff to direct the defendants to begin the case, has been allowed by the trial Court. The suit is one for partition. The plaintiff seeks for partition and separate possession of the share. The defendants are contesting the suit stating that already oral partition had taken place and as a matter of fact, pursuant to the oral partition, the plaintiff has sold the properties allotted to him also. The other grounds of defence are also taken. In that scenario, when the plaintiff filed the application, the trial Court has allowed the same. In this regard, as far as the right to begin is concerned, the same is governed by Order XVIII Rule 1 of CPC, which reads as hereunder:

“Order XVIII – Hearing of the Suit and Examination of Witnesses

Rule 1: Right to begin—

The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or



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on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.”

3. Therefore, it can be clear that normally, it is for the plaintiffs to begin the case. It is only under the circumstances, where the defendants admits the facts alleged by the plaintiff and contends either on a point of law or on some additional facts alleged by the defendants, the plaintiff is not entitled to any part of the relief, which he seeks the defendant has to begin. In this case, the defendants are not admitting the facts alleged by the plaintiff and the dispute is on facts also.

4. In view thereof, the order passed by the trial Court is unsustainable and the Civil Revision Petition is allowed. I.A.No.156 of 2021 in O.S.No.75 of 2016, on the file of the learned Additional District Judge, Pudukottai, shall stand dismissed. The trial Court shall proceed with the suit further. No costs. Consequently, connected miscellaneous petition is closed.

02.08.2024

NCC : Yes
sjj



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D.BHARATHA CHAKRAVARTHY, J.

sjj

To

The Additional District Judge, Pudukottai.

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