

C.R.P. (PD) No.1073 of 2024

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IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 18.03.2025

CORAM:

THE HONOURABLE MS. JUSTICE P.T.ASHA

C.R.P. (PD) No.1073 of 2024
and C.M.P.No.5578 of 2024

1. Saravanan
2. Kalaiarasan

...Petitioners

Vs

1. N.Duraiswamy
2. N.Rangaswamy
3. N.Chinnaswamy

N.Palani Swamy Gounder (Died)

4. Chellamuthu

...Respondents

PRAYER: Civil Revision Petition filled under Article 227 of Constitution of India to set aside the fair and final order dated 02.09.2023 passed in I.A.No.3 of 2023 in O.S.No.203 of 2012 on the file of the District Munsif Court at Dharapuram.

For Petitioner : Mr.B.Kumarasamy
for Mr.B.Vijayakumar



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For Respondent-1 : Mr.M.Guruprasad

For Respondents

2 to 4 : Served -No Appearance

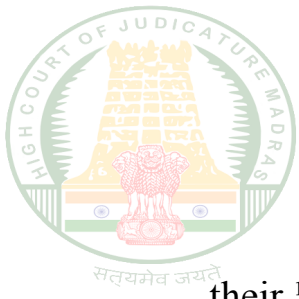
ORDER

This Civil Revision Petition is filed to set aside the fair and final order dated 02.09.2023 passed in I.A.No.3 of 2023 in O.S.No.203 of 2012 on the file of the District Munsif Court at Dharapuram.

2. The proposed parties, who had filed I.A.No.3 of 2023 in O.S.No.203 of 2012 on the file of the District Munsif Court, Dharapuram, are the revision petitioners before this Court.

3. The short facts are set out herein below and the parties are referred to in the same litigative status as before the trial Court.

The plaintiffs had filed the above referred suit for a partition of

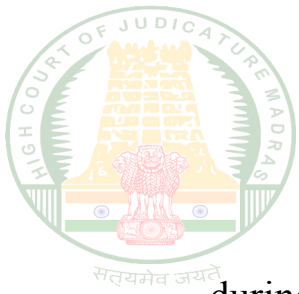


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their $\frac{1}{2}$ share in the suit schedule property. They would claim a right to the property on the basis of a decree for specific performance that the plaintiff's father one Nallasamy Gounder had obtained against the 2nd defendant and his sons, Saravanan and Kalaiarasan in O.S.No.270 of 2004 on the file of the District Munsif Court, Dharapuram. Pursuant to which, a Sale Deed had also been executed in favour of the plaintiffs in E.P.No.46 of 2009 on the file of the District Munsif, Dharapuram. The plaintiffs would also submit that they have got possession of their $\frac{1}{2}$ share by filing E.P.No.41 of 2011. Since the property is undivided and it is not possible to enjoy the properties jointly, the plaintiffs had approached the original defendant, Palanisamy Gounder, the father of the 2nd defendant to execute the sale deed in respect of the $\frac{1}{2}$ share. However, since there was no response, the suit came to be filed.

4. Pending the suit, Palanisamy Gounder had died and his son, Chellamuthu was brought on record. However, Palanisamy Gounder



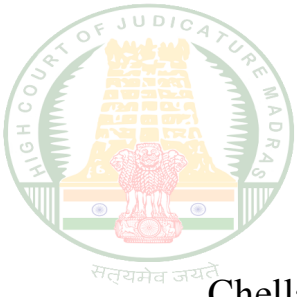
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during his lifetime had executed a Will bequeathing his property on the proposed parties. Therefore, in their capacity as legatees they had sought to be impleaded in the above referred suit. However, by order dated 02.09.2023, the learned Judge has turned down the request stating that the application was highly belated and had been brought out when the defendants were set-exparte and the matter was listed for pronouncing orders. Challenging the same, the petitioner is before this Court.

5. Heard the learned counsel for the petitioner and the learned counsel for the first respondent and perused the materials available on record.

6. Admittedly, even according to the plaintiffs, Palanisamy Gounder owned the other $\frac{1}{2}$ of the property and he is no more. They have impleaded his son, Chellamuthu. Palanisamy Gounder had executed a Will bequeathing the property to his grand children of



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Chellamuthu who are the petitioners before this Court and the proposed parties in the suit. Therefore, the interest of the deceased Palanisamy Gounder devolves only upon the proposed parties and therefore, their presence is necessary in the proceedings, as they inherited the share of Palanisamy Gounder.

7. Accordingly, the Civil Revision Petition is allowed and the order dated 02.09.2023 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

18.03.2025

Index: yes/no

Speaking Order: Yes/No

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To

The District Munsif Court at Dharapuram.



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P.T.ASHA, J.

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