



C.R.P.No.139 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :07.04.2025

Coram:

THE HONOURABLE Ms. JUSTICE P.T.ASHA

C.R.P.(PD)No.139 of 2020

and

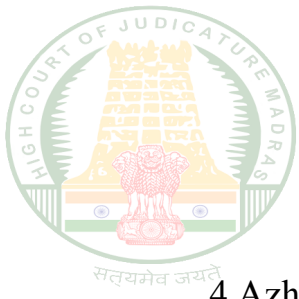
C.M.P.No.789 of 2020

Pappathi @ Devayal (died)

1.Sarasu @ Saraswathi, F/A 56
Wife of Thangarasu
Daughter of Late Uruma Naicker,
Door No.17, Kannadasan Street,
Surampatti, Erode-9.

2.Krishnaveni, F/A 49,
Wife of Shanmugam,
Daughter of Late Uruma Nicker
No.13, LIC Nagar,
Kaikatty Valasu,
Erode Taluk,Erode District.

3.Thangamani,F/A 40,
Wife of Sivanantham,
Daughter of Uruma Naicker
Door No.3, Rajaji Nagar,
2nd Street, Cotton Mill Road,
Tiruppur District 02.



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4.Azhagu Naicker,M/A 80,
Son of Rama Naicker,
Door No.28, Ayyakaduveethi,
Pallapalayam,
Kanjikoil,
Perundurai Taluk.

5.Kandasamy, M/A 52,
Son of Azhagu Naicker,
Door No.28, AyyakaduVeethi,
Pallapalayam,
Kanjikoil, Perundurai Taluk.

.. Petitioners/Petitioners/Plaintiffs

/versus/

Kolanthayal (died)

1.Nataraj @ Mani,
Son of Uruma Naicker,
Pomma Naickenpalayam,
Odathurai Post,
Gobichettipalayam Taluk,
Erode District.

Selvam @ Palaniappan (died)

2.Eswari,
Wife of Nataraj
Daughter of Uruma Naicker
Karattakaadu, Puthupirivu,
Vinayagar Koil Street,
Kangayam Road,
Tiruppur-8.

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3.Mallika,
Wife of Balan @ Gopal,
Ration Shop,
Near Kumaran College,
Tiruppur Taluk,
Tiruppur District.

4.Jothi,
Daughter of Selvan @ Palaniappan,
Petti Shop,
Suppatta Naickenpalayam,
Tiruppur Taluk,
Tiruppur District.

5.Arulkumar,
Son of Selvan @ Palaniappan,
PommaNaickenpalayam,
Odathurai post,
Gobichettipalayam Taluk,
Erode District.

.. Respondents/Respondents/Defendants

Civil Revision Petition has been filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 03.01.2020 made in I.A.No.6 of 2019 in O.S.No.107 of 2010 on the file of the Subordinate Court, Gobichettipalayam.

For Petitioners	:Mr.M.Guruprasad
For Respondents	:Mr.P.V.Ramachandran for R1
	Notice served to R3 to R5
	No appearance



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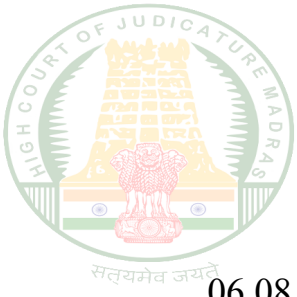
ORDER

Challenging the order dated 03.01.2020 made in I.A.No.6 of 2019 in O.S.No.107 of 2010, the plaintiffs have approached this Court.

2.The short facts of the case are set out hereinbelow:-

The plaintiffs had filed the suit in O.S.No.107 of 2010 seeking partition and separate possession of their 4/8 shares in the suit schedule property and for an injunction restraining the defendants from alienating the plaintiffs' share to the third parties, with specific reference to boundaries, till final decree is passed.

3. It is the case of the plaintiffs that the first item of the suit schedule property was purchased by their grandfather, Uruma Naicker, under a registered sale deed dated 30.04.1937. The second item of the suit schedule property was purchased by their grandmother Valliammal under a registered sale deed dated 06.12.1941. The father of the plaintiffs Uruma Naicker had purchased the third item of the property under a registered sale deed dated



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06.08.1945 and the fourth item of the property was also purchased by him under a registered sale deed dated 05.10.1960. After the demise of Uruma Naicker, the plaintiffs and the defendants inherited the same as his legal representatives. As the suit properties are the self acquired properties of Uruma Naicker, the plaintiffs and the defendants are each entitled to a 1/8th share therein.

4. The plaintiffs would submit that since there was an inconvenience in jointly enjoying the property, they demanded partition on 14.06.2010. A notice was also sent by the plaintiffs regarding the second and third items of the property, specifically demanding partition. However, there was no response from the defendants. Hence, the plaintiffs have come forward with the suit in question.

5. The fourth defendant had filed the written statement, in which, she more or less adopted the plaintiffs' case stating that she is entitled to a 1/8th share.

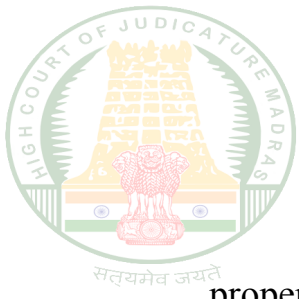


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6. The contesting defendant namely the second defendant had filed the written statement *inter alia* contending that the properties are the ancestral properties of his father Uruma Naicker's father Rama Naicker. He also also contended that on 27.05.1982, there was a partition of the ancestral properties between the defendants and their father. The plaintiffs have suppressed the said partition and had obtained an *ex parte* preliminary decree. That apart, one of the sharers, P.U.Murthy, to whom the property was allotted on 27.05.1982, in the partition, has not been made a party. However, the property allotted to him under the partition deed has been included in the schedule of properties. The defendants further submitted that they are in enjoyment of their respective shares and had been remitting the revenue outgoings.

7. The second defendant further submitted that the plaintiffs have suppressed the fact that P.U.Murthy along with his wife and children are living in Anthiyur. The 2nd defendant submitted that since the ancestral



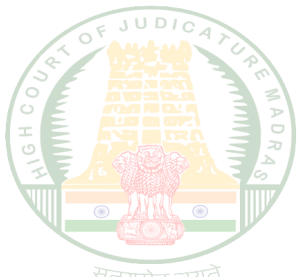
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property had already been partitioned, the plaintiffs are not entitled to a share in the said property. He also raised the issue of non joinder of a necessary party. Since the plaintiffs are not in joint possession, the Court fee paid under Section 37(2) of the Tamil Nadu Court Fees and Suit Valuation Act was erroneous and the plaintiffs ought to have filed Court fee under Section 37(1) of the aforesaid Act. Therefore, they sought dismissal of the suit.

8. Pending suit, the plaintiffs have come forward to file an application in I.A.No.5 of 2019 to implead the 8th respondent as the 8th defendant in the aforesaid suit. The 8th defendant is the said P.U.Murthy.

9. In the affidavit filed in support of the said application, the plaintiffs submitted that they had filed the suit based on the sale deeds dated 30.04.1937, 06.12.1941, 06.08.1945 and 05.10.1960. That apart, in the written statement, the defendants brought up the partition deed dated 27.05.1982 and also raised the issue of non joinder of a necessary party



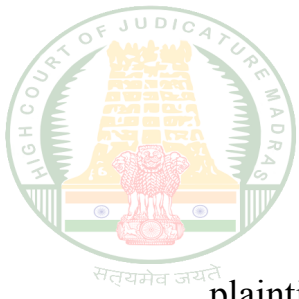
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P.U.Murthy.

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10. Considering the fact that he is a proper and necessary party, this application for impleading him as a party has been taken out. The defence to the above petition was that it was highly belated and an abuse of the process of law. That apart, the suit is at the stage of argument and at this later stage, the application has been filed.

11. It appears that the said application, I.A.No.5 of 2019 came to be dismissed for default on 12.012.2019 on account of the failure on the part of the plaintiffs to take notice to the proposed party. In the affidavit filed in support of the application to restore I.A.No.5 of 2019, namely I.A.No.6 of 2019, the plaintiffs submitted that they were not aware of the fact that the notice had not been served on the proposed 8th respondent; and that the failure to take notice was on account of the fact that, the junior counsel, to whom, the case has been entrusted, by oversight, had forgotten to take notice. The defendants contested the said application stating that the



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plaintiffs are only bent on protecting the proceedings.

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12. The learned Sub Judge, Gobichettipalayam, by her order dated 03.01.2020 was pleased to dismiss the said application. Challenging the same, the petitioners are before this Court.

13. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the 1st respondent and perused the materials available on record.

14. It appears that on 12.12.2019, I.A.No.5 of 2019 was dismissed on account of the failure on the part of the plaintiffs to take notice both privately as well as through Court to the proposed party. The error was attributed to the oversight on the part of the junior counsel. Within four days, the application has been filed to restore I.A.No.5 of 2019. The suit in question is one for partition and it is seen that the plaintiffs had taken out an application to implead the proposed party on 09.12.2019, which was



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dismissed on 12.12.2019 for non payment of batta. The respondents/defendants have filed their counter thereafter, on 20.12.2020. The plaintiffs had immediately taken steps to restore the application and there does not appear to be any inordinate delay in initiating the proceedings. At the very first instance, the learned Judge has proceeded to dismiss I.A.No.5 of 2019 for default. As already stated, the said application was filed on 09.12.2019 and dismissed for default within three days.

15. Considering the above facts, I am of the considered opinion that the order of the learned Sub Judge, Gobichettipalayam dismissing the I.A.No.5 of 2019 is rather harsh and therefore, the Civil Revision Petition is allowed and the fair and final order passed by the Subordinate Court, Gobichettipalayam in I.A.No.6 of 2019 dated 03.01.2020 is allowed and the order made in I.A.No.5 of 2019 in O.S.No.107 of 2010, dated 12.12.2019 is also set aside and the application restored to file. Consequently, connected miscellaneous Petition is closed. No costs.

07.04.2025

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Index:yes/no

Speaking order/non speaking order

Neutral citation:yes/no

To

The Subordinate Court, Gobichettipalayam.



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P.T.ASHA,J.

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and
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