



CRP.No.644 of 2020

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

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**Date : 08.07.2025**

**CORAM:**

**THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR**

**CRP.No.644 of 2020**  
**and CMP.No.3331 of 2020**

P.Subramaniam

. . . Petitioner

**Versus**

1.K.Perumal  
2.K.Rangasamy  
3.Maragatham  
4.P.Mohan  
5.P.Gopal  
6.K.Arumugam  
7.K.Deivathal  
8.S.Kamalam  
9.P.Parvathi  
10.D.Krishnaveni  
11.M.Easwari  
12.K.Mahalingam

. . . Respondents

**PRAYER :** Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order made in I.A.No.617 of 2019 in O.S.No.330 of 2018 on the file of the Subordinate Judge, Palladam.

For petitioner : Mr.K.S.Karthik Raja

For Respondents : Mr.I.Pragadeesh for R7 to R11



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for Mr.S.Kathamalai Kumaran  
R1, R2, R12 – Service awaited  
R3 to R6 – Court notice returned

### **ORDER**

The order in and by which the learned Sub Judge, Palladam had dismissed the application filed by the revision petitioner/11<sup>th</sup> defendant under Order XVII Rule 2 read with Order IX Rule 8 of CPC to dismiss the suit for default for non-appearance of the plaintiffs in O.S.No.330 of 2018 is put in challenge before this Court by filing the present revision petition.

2. The suit has been filed for partition. It is the case of the revision petitioner that the plaintiff was examined on 18.09.2019, however, he did not appear for cross examination for three hearings, i.e., 23.09.2013, 26.09.2019 & 17.10.2019, therefore, the application has been taken out by the revision petitioner/11<sup>th</sup> defendant for dismissal of the suit in O.S.No.330 of 2018. The Trial Court taking note of the fact that part of the suit claim is admitted in the pleadings and the substantial evidence is also on record dismissed the application vide order dated 11.12.2019. Challenging the said order, the unsuccessful 11<sup>th</sup> defendant has come up with this revision.



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3. Heard the learned counsel for the petitioner and the learned counsel for the respondents 7 to 11 and perused the materials placed on record.

4. The suit is filed for partition and all the parties have shares; even the defendants can be transposed as plaintiffs. Such view of the matter, merely because the plaintiff has not appeared for cross examination for three hearings, that cannot be a ground to dismiss the entire suit, since it is a partition suit. It is worthwhile to refer to the judgment of the Hon'ble Supreme Court that in the case of *Bhagwan Swaroop v. Mool Chand* reported in *AIR 1983 SC 355*, wherein, it has been held that in a suit for partition, the position of the plaintiff and the defendant could be interchangeable. Each party adopts the same position as the other parties. Further, so long as the suit was pending, and defendant could ask the Court to transpose him as a plaintiff and a plaintiff could ask for being transposed as a Defendant.



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**N. SATHISH KUMAR, J.**

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5. Accordingly, I do not find any merits and this revision stands dismissed. No costs. Consequently, connected miscellaneous petition stands closed. The Trial Court is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this Order.

**08.07.2025**

Index : Yes / No

Internet: Yes

Speaking/non speaking order  
dhk

To,

1. The Sub Judge  
Subordinate Judge, Palladam

2. The Section Officer  
VR Section, Madras High Court

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