



CRP.1313 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 25.03.2025

CORAM

**THE HONOURABLE MR JUSTICE A.D.JAGADISH CHANDIRA**

**CRP No. 1313 of 2019**

**and CMP.No.8613 of 2019**

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EKAMBARAM

S/o.Late Sendroya Gounder, Pappanoor Medu,  
Gurusilappattu Post, Vaniyambadi Taluk,  
Vellore District

..Petitioner  
/4<sup>th</sup> respondent  
/1<sup>st</sup> defendant

**Vs**

1.Sivajothi

Malliga (since died)

2.Chitra

3.Subithra

Lakshmi (since died)

4.Parvathi

5.Kamala

6.Malliga

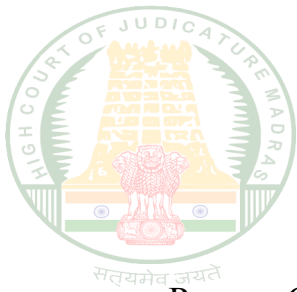
7.Thiruanathan

8. Meena

..Respondents 4 to 8

/Respondents 5 to 10

/Defendants 3 to 8



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**Prayer:** Civil Revision Petition filed under 115 of CPC as against the order and decretal order dated 10.12.2018 passed in I.A.No.553/2017 in O.S.No.85 of 2009 on the file of Sub Court, Vaniyambadi, Vellore District.

**For Petitioner** : Mr.R.Ramesh

**For Respondents** : Mr.R.Sunilkumar for R1  
Mr.N.Umapathy For R4 To R6  
Mr.S.P.Kumaran For R2 And R3

### **ORDER**

This revision petition has been filed seeking to set aside the order dated 10.12.2018 passed in I.A.No.553 of 2017 in O.S.No.85 of 2009 on the file of Sub court, Vanniyambadi, Vellore District.

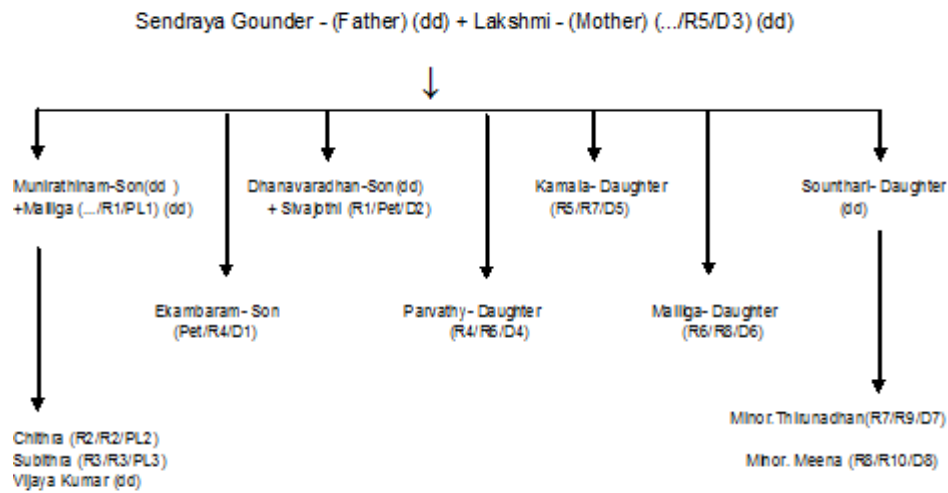
2. The brief facts of the case is as follows:-

One Sendraya Gounder and Lakshmi had 26 items of properties in Thirupattur village, Vaniyambadi Taluk in Vellore District. The said Sendraya Gounder had 3 sons and 4 daughters. The 1<sup>st</sup> son Muniratnam passed away and his wife Malliga along with daughters viz., Chitra and Subithra filed O.S.No.85 of 2009 seeking for partition of the properties. The Geneology is extracted hereunder:-



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### Genealogy



3. Before the trial court, the plaintiff Malliga filed a suit for partition in O.S.No.85/2009, wherein, the 1<sup>st</sup> defendant/Revision Petitioner, filed a written statement which was adopted by the defendants 3 to 8. Thereafter, owing to family panchayats, and with the consent of parties, a preliminary decree was passed, whereby, the trial court directed the properties to be divided into eight equal shares and directed one share to be allotted to the plaintiffs and also appointed an Advocate Commissioner and directed the mesne profits to be shared equally with the plaintiffs.

4. While so, the 2<sup>nd</sup> defendant Sivajothi, wife of Danavardhan filed I.A.No.553 of 2017 seeking passing of final decree by appointment of an Advocate Commissioner. The legal heirs of the plaintiff/1<sup>st</sup> respondent Malliga



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viz., Chitra and Sumithra were arrayed as respondents 2 and 3 and the 4<sup>th</sup> respondent was Ekambaram; 5<sup>th</sup> respondent since deceased, the respondents 6 to 10 were arrayed as her legal heirs in I.A.No.553 of 2017.

5. The plaintiff and other defendants filed counter in the final decree proceedings contending that the petitioner in I.A.No.553 of 2017 namely Sivajothi, is not entitled to any share since she had relinquished her share of the property in the family arrangement dated 07/02/2003, subsequent to the death of her husband, and as such, she is not entitled to any share in the suit properties.

6. While deciding the application, the trial court held that the preliminary decree was passed on 04.03.2010 and that the issue of a family panchayat was not raised prior to the passing of the preliminary decree and thereby, rejected the claim of the respondents and ordered for the appointment of an Advocate Commissioner by order dated 10.12.2018, against which the present Civil Revision Petition has been filed.



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7. Mr.R.Ramesh, learned counsel for the Revision Petitioner would submit that the 1<sup>st</sup> respondent Sivajothi is none other than the sister in law of the petitioner and the wife of the petitioner's brother Danavardhan. After the death of the petitioner's brother Danavardhan, a family panchayat was conducted and the 1<sup>st</sup> respondent Sivajothi, in the presence of panchayatdars on 07.02.2003, received an amount of Rs.1,10,000/- and had relinquished her 1/4<sup>th</sup> share in the family properties. In such circumstances, she is not entitled to any share in the family properties. The petitioner has also filed the original deed of relinquishment of right dated 07.02.2003 before the trial court, whereas the trial court had refused to accept the same and had passed the order.

8. He would further submit that the 1<sup>st</sup> respondent had remained exparte in the suit and she has not filed her written statement claiming that she is entitled to a share in the property. He further argued that the trial court ought to have believed the deed of relinquishment, which the 1<sup>st</sup> respondent had signed in the presence of her father and other panchayatdars. The learned counsel for the revision petitioner thereby, seeks to set aside the impugned order dated 10.12.2018.



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9. Mr.Sunil kumar, learned counsel appearing for the 1<sup>st</sup> respondent

would submit that the 1<sup>st</sup> respondent is the wife of one Danavardhan S/o.

Sendraya Gounder; and that she is entitled to 1/8<sup>th</sup> share. The petitioner/1<sup>st</sup> defendant, neither in his written statement nor in his oral evidence stated about the so called relinquishment deed dated 07.02.2003 and in such circumstances, the trial court rightly found that such a plea was not raised before the trial court before preliminary decree was passed on 04.03.2010 and the trial court, thus, had rightly rejected the claim of the petitioner/1<sup>st</sup> defendant and other respondents and ordered for the appointment of an Advocate Commissioner.

10. He would further submit that when the petitioner/1<sup>st</sup> defendant in the suit and the respondents 2 and 3 who are the plaintiffs in the suit for partition failed to raise such a plea, they cannot at this stage, take such a stand. In support of his contention, the learned counsel relied on the judgment of the Hon'ble Supreme Court in ***Nandkishore Lalbhai Mehta Vs. New Era Fabrics Private Limited and others*** reported in ***(2015) 9 SCC 755***, wherein, the Hon'ble Supreme Court has held that in the absence of pleadings, evidence, if any, produced by the parties cannot be considered, no party should be permitted to travel beyond its pleading and that all necessary and material facts



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should be pleaded by the party in support of the case set up by them. He would

further submit that when the respondent had denied such a document, the mere production and marking of a document as an Exhibit alone is not enough and as such, the execution has to be proved by admissible evidence. The petitioner/1<sup>st</sup> defendant has not taken any steps to prove the document and the trial court, rightly finding that no pleadings are elicited in the suit and the document has not been proved in the manner known to law, had rightly rejected the claim of the petitioner. The learned counsel for the 1<sup>st</sup> respondent in this regard relied on the judgment of the Supreme Court in the case of **Narbada Devi Gupta Vs. Birendra Kumar Jaiswal and another** reported in (2003) 8 SCC 745. Reference is made to Paragraph 16 of the said judgment.

“ 16. Reliance is heavily placed on behalf of the appellant on the case of Ramji Dayawala & Sons (P) Ltd. The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence, that is, by the “evidence of those persons who can vouchsafe for the truth of the facts in issue” . The situation is, however, different where the documents are produced, they are admitted by the opposite party, signatures on them are also admitted and they are marked thereafter as exhibits by the court. We find no force in the argument advanced on behalf of the appellant that as the mark of



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exhibits has been put on the back portions of the rent receipts near the place where the admitted signatures of the plaintiff appear, the rent receipts as a whole cannot be treated to have been exhibited as admitted documents.”

11. Mr.R.Sunil Kumar, the learned counsel for the 1<sup>st</sup> respondent, would ultimately contend that when no pleadings have been raised about the existence of such a relinquishment deed, the petitioner at the stage of the final decree proceedings raised such a plea and therefore, sought for dismissal of the Civil Revision Petition.

12. Mr.Umapathy, learned counsel appearing for the respondents 4 to 6 who are the defendants in the suit, would submit that the 1<sup>st</sup> respondent having relinquished her share in the properties and further, having remained exparte in the proceedings, cannot file an application seeking for the appointment of an Advocate Commissioner.

13. In response to the said submissions, Mr.Ramesh, learned counsel for the petitioner would rely on the decision of the Honourable Supreme Court in the case of *Korukonda Chalapathi Rao and Another Vs Korukonda Annapurna Sampath Kumar* reported in (2022) 15 SCC 475 and would



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submit that once the 1<sup>st</sup> respondent entered into the deed of relinquishment, a

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document in the nature of a Memorandum, evidencing a family arrangement which was already entered into and had been prepared as a record of what had been agreed upon, it need not be stamped or registered and therefore, the trial court ought to have relied upon the said law laid down by the Apex Court and ought to have rejected the Application for appointment of an Advocate Commissioner. In support of his contention, the learned counsel would also rely on the judgment of the Apex Court in ***S.Shanmugam Pillai and others Vs. K.Shanmugam Pillai and others*** reported in ***(1973) 2 SCC 312*** and would submit that even assuming such a family settlement took place and though the same was not registered, it would operate as a complete estoppel against the parties to such a family arrangement. He would submit that in the case on hand, the 1<sup>st</sup> respondent, having relinquished her right, may not be permitted to go back on the agreement, when the properties are brought for partition.

14. Heard the learned counsel for parties.

15. From the records available and a perusal of the order passed in I.A.No.553 of 2018 in O.S.No.85 of 2009 and the preliminary decree dated 04.03.2010, it is seen that the petitioner/1<sup>st</sup> defendant contested the suit in



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O.S.No.85 of 2009, however, he had not referred to such a family arrangement

in his written statement. Further the claim of relinquishment of right by the 1<sup>st</sup> respondent/2<sup>nd</sup> defendant was introduced only in the counter filed on 08.02.2018 by respondents 2 and 3 and in the counter filed on 28.02.2018 by the 4<sup>th</sup> respondent. The trial court, rightly finding that such a plea was not raised in the written statement filed in O.S.No.85 of 2009 and that the documents have not been marked in the manner known to law, rejected the claim and allowed the petition for appointment of Advocate Commissioner.

16. The Apex Court in *Nandkishore Lal Bhai Mehta case [cited supra] (2015) 9 SCC 755*, pointed out as follows:-

“ 20. The learned Senior counsel further submitted that unless and until there is an amendment of the pleadings, no evidence with regard to the facts not pleaded can be looked into, for which he relied upon a decision of this Court in *Bachhaj Nahar vs. Nilima Mandal & Anr.* (2008) 17 SCC 491 wherein it was held as under:-

“7. Feeling aggrieved, the plaintiffs filed a second appeal before the High Court. The High Court by judgment dated 14-5-2004 allowed the second appeal. The High Court held that the plaintiffs had failed to make out title to the suit property. It however held that the plaintiffs had made out a case for grant of relief based on easementary right of passage, in respect of the suit property, as they had claimed in the plaint that they and their vendor had been using the suit property and the first



defendant and DW 6 had admitted such user. The High Court was of the view that the case based on an easementary right could be considered even in the absence of any pleading or issue relating to an easementary right, as the evidence available was sufficient to make out easementary right over the suit property. The High Court therefore granted a permanent injunction restraining the first defendant from interfering with the plaintiffs' use and enjoyment of the "right of passage" over the suit property (as also of the persons living on the northern side of the suit property).

.....

17. It is thus clear that a case not specifically pleaded can be considered by the court only where the pleadings in substance, though not in specific terms, contain the necessary averments to make out a particular case and the issues framed also generally cover the question involved and the parties proceed on the basis that such case was at issue and had led evidence thereon. As the very requirements indicate, this should be only in exceptional cases where the court is fully satisfied that the pleadings and issues generally cover the case subsequently put forward and that the parties being conscious of the issue, had led evidence on such issue. But where the court is not satisfied that such case was at issue, the question of resorting to the exception to the general rule does not arise. The principles laid down in *Bhagwati Prasad and Ram Sarup Gupta* referred to above and several other decisions of this Court following the same cannot be construed as diluting the well-settled principle that without pleadings and issues, evidence cannot be considered to make out a new case which is not pleaded. Another aspect to be noticed, is that the court can consider



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such a case not specifically pleaded, only when one of the parties raises the same at the stage of arguments by contending that the pleadings and issues are sufficient to make out a particular case and that the parties proceeded on that basis and had led evidence on that case. Where neither party puts forth such a contention, the court cannot obviously make out such a case not pleaded, suo motu”.

....

39. It may be mentioned that in the plaint filed by the appellant, the plea set up was that at the instigation of the defendants and in collusion with them, the Mill Mazdoor Sabha has refused to give its permission to the sale of the mill premises of Defendant No. 1 to the plaintiff. It was not a case set up by the appellant that the Mill Mazdoor Sabha had agreed to the proposed sale on certain conditions offered by the respondents. In view of the settled position of law, fresh pleadings and evidence which is in variation to the original pleadings cannot be taken unless the pleadings are incorporated by way of amendment of the pleadings. In our considered opinion, the Division Bench of the High Court was perfectly justified in holding that unless the plaint is amended and a specific plea is taken that the Mill Mazdoor Sabha had agreed for the proposed sale on certain terms and conditions offered by the respondents herein, the two letters viz., Exh Nos. P-27 and P-28 could not have been taken into consideration at all.

40. Further, it is the case of the appellant that the aforesaid two letters were given by one Shri M.P. Agrawal-a former Director of the Respondent No.1. Shri M.P. Agrawal has not been produced as a witness so as to establish that these two letters were in fact given by the



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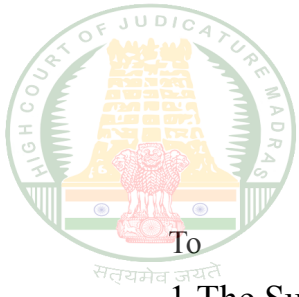
Mill Mazdoor Sabha. Further, in the statement of Mr. Vasant Gupte (PW-2), he has only stated that the letter must have been sent by the Mill Mazdoor Sabha and the post- script might have been written by Mr. Pathak as it bears his signature. He had not stated that it was written in his presence. Mere identifying the signature of Mr. Pathak does not prove the contents of the said letter which is being relied upon by the appellant.”

17. A bare reading of the written statement filed by the 1<sup>st</sup> defendant and adopted by the defendants 3 to 8 shows that there is no specific plea taken with respect to the deed of relinquishment dated 07.02.2003 executed by the 1<sup>st</sup> respondent and as such, I do not find any infirmity in the order passed by the Trial Court, in I.A.No.553 of 2018 in O.S.No.85 of 2009.

18. In the light of the above discussion, this court feels that the Civil Revision Petition lacks merit and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

25.03.2025

nvsri



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To

1.The Sub-Judge,  
Sub Court, Vaniyambadi, Vellore District.

2.The Section Officer, V.R.Section, High Court, Madras.



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**A.D.JAGADISH CHANDIRA, J.**

nvsri

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