

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 08.07.2025

Order pronounced on : 01.08.2025

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THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.No.2223 of 2025
& CMP.No.12872 of 2025

Palanisamy

..Petitioner

Vs.

1.N.Valliammal @ Vellaiammal
2.T.Vellaiammal
3.Sentamil Selvi
4.Meera Rajeshwari
5.Swetha
6.K.Sivaraj
7.Marappa Gounder
8.M.Sivaraj
9.Thangamani
10.Bakyalakshmi

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decretal order dated 13.02.2025 made in I.A.No.7 of 2024 in O.S.No.214 of 2016 on the file of the II Additional District and Sessions Judge, Tiruppur.

For Petitioner : Mr.N.S.Suganthan

For Respondents : Mr.N.Mayilsamy for RR1 & 2
No appearance for RR7 to 10
RR3 to 6 not ready in notice



ORDER

This revision petition has been filed by the 1st defendant in O.S.No.214 of 2016, challenging the order in I.A.No.7 of 2024, permitting the 1st respondent to begin and by directing the plaintiffs to adduce evidence thereafter.

2.I have heard Mr.N.S.Suganthan, learned counsel for the petitioner and Mr.N.Mayilsamy, learned counsel for the respondents 1 and 2.

3.The learned counsel for the revision petitioner would submit that the suit is one for partition and by way of defence, the revision petitioner had pleaded that there was an oral family arrangement in the family in respect of the suit schedule properties and the properties were already divided in terms of the said family arrangement. In view of the said specific contention raised by the 1st defendant in the suit, the plaintiff took out an application to direct the defendants to lead evidence first. The said application was contested by the revision petitioner on the ground that the suit has been pending for eight years and the plaintiff has failed to commence trial and that despite giving an undertaking to conduct the suit on a day to day basis, the present application has been filed. However, the Trial Court has allowed the application and



directed the 1st defendant to begin evidence and permitted the plaintiff to adduce evidence thereafter.

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4.The learned counsel for the petitioner would state that the plaintiff has not shown any interest in prosecuting the suit. In fact, an earlier suit for partition in O.S.No.229 of 2015 before the Principal Subordinate Court, Tiruppur, was dismissed for non-prosecution and even the present suit was dismissed for non prosecution and in the restoration application, they had filed an undertaking affidavit assuring the Court that they would conduct the suit on a day to day basis and accepting the condition alone, the suit was restored to file. Therefore, it is contended that it is not open to the petitioner to seek for direction to the defendants to begin.

5.The learned counsel for the petitioner would further submit that the issue Nos.1 to 4 that have been framed in the suit, are clearly casting burden of proof on the plaintiff and the Trial Court has erroneously allowed the application without ascertaining on whom the burden of proof lies. He would further submit that the only intention of the plaintiff was to avoid the witness box and protract the proceedings. The learned counsel for the petitioner also relies on the decision on the Hon'ble Supreme Court in *Jami Venkata*



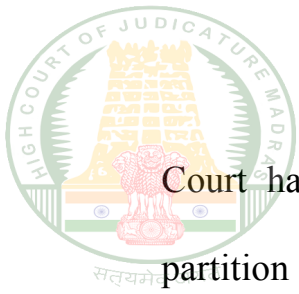
Suryaprabha and Another Vs. Tarini Prasad Nayak and Others, in *Special Leave Petition (Civil) No.29045 of 2024* dated 09.12.2024, where the Hon'ble

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Supreme Court interpreting Order XVIII Rule 1 of CPC held that the Rule provides for the plaintiff's right to begin the evidence, but not the Court's obligation to ask the plaintiffs to begin first and that there is no impediment for the Court to call upon either party to lead evidence first, depending upon the facts and circumstances of the case and the nature of issues framed. The Hon'ble Supreme Court further held that either the party can insist that the other one should be asked to lead evidence first and it would all depend upon what the Court deems proper in the circumstances.

6.This Court, in *P.Lingasamy Vs. B.Pramavathy and Another*, reported in *2017 (1) CTC 305*, advertng its attention to Order XVIII Rule 1 of CPC, held that when several defences have been taken by the defendant, one of which was based on a Will, then the defendant cannot be compelled to lead any evidence at the first instance. The learned counsel for the petitioner would therefore pray for the order of the Trial Court being set aside.

7.Per contra, the learned counsel for the respondents 1 and 2 would state that there is no infirmity in the findings rendered by the Trial Court; the Trial



Court has rightly found that the parties are co-owners and the suit is for partition of the suit schedule properties and that the 1st defendant has taken a specific stand that there is a family arrangement on the first year death ceremony of the father, in terms of which, sisters were allotted to 3 acres and the remaining 17 acres were allotted to the male heirs. He would therefore pray for the revision being dismissed.

8.I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the impugned order that is under challenge in this revision.

9.Admittedly, the suit is one for partition of the suit schedule properties. The case of the plaintiff is that the properties are common properties and the plaintiffs and the defendants are co-owners and that there has been no partition and consequently, a decree for partition is sought for. However, it is the contention of the 1st defendant that there was a family arrangement after the demise of the father and in terms of the family arrangement, sisters were given certain property and the remaining properties were allotted to the sons. I have perused the written statement filed by the 1st defendant.



10. Apart from mentioning that the earlier suit for partition has been dismissed and the same has been suppressed in the present suit, with regard to the properties the specific stand of the 1st defendant in paragraph No.6 is that there was a family arrangement in the family between the brothers and sisters, on the day of the first year death ceremony of the father and that all the sons and daughters have wholeheartedly accepted the family arrangement made by elderly relatives, in terms of which, three sisters were allotted 3 acres and the remaining properties were jointly allotted to the brothers.

11. It is further contended that the family arrangement was acted upon also and the parties have been in separate possession and enjoyment in terms of the family arrangement and therefore, the plaintiffs are not entitled to seek partition. Apart from the above, I do not find any other defence that has been raised by the 1st defendant. In view of the above, as rightly found by the Trial Court, if evidence is not adduced by both the parties, the suit will have to be decreed and it is therefore incumbent on the 1st defendant to establish his plea of oral partition and family arrangement which would be the only spoke to the relief of partition sought for by the plaintiffs.



12. The learned counsel for the petitioner referring to the provisions of Order XVIII Rule 1 of CPC would contend that the Court has to read Rules 1, 2 and 3 of Order XVIII together and referring to Rule 2, he would state that when the suit is fixed for hearing, the party having the right to begin shall have to state his case and produce evidence in support of the issues which he is bound to prove and thereafter, the other party shall state his case and produce evidence. Right of a reply is also available to the party beginning. Referring to Rule 3, the learned counsel for the petitioner state that when there are several issues and burden of proving some of the issues lies on the other party, the party beginning may exercise an option either to produce his evidence on such issues or reserve it by way of answer to the evidence produced by the other party. The Rule also enables the party beginning to produce evidence on those issues, after the party has produced all his evidence to reply specifically on the evidence so produced by the party beginning. The learned counsel for the petitioner therefore referring to these provisions would submit that several issues have been framed in the suit and the burden of proving that the plaintiffs are entitled to their share in the suit property is only upon them and therefore, they cannot shift the responsibility and call upon the 1st defendant to enter the witness box first. I am unable to countenance the said argument of the learned counsel for the petitioner.



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13. In terms of Rule 1, normally the plaintiffs would have the right to begin. The exception available even in Rule 1 is a case where the defendant admits the facts, alleged by the plaintiffs and based on any point of law or additional facts, contends that the plaintiff is not entitled to relief, then the defendant has a right to begin. In the present case, as already discussed herein above, the only defence that is put against the claim for partition is that there was an oral family arrangement between the parties and the same has been acted upon. Therefore, in the light of such specific stand taken by the 1st defendant, certainly the 1st defendant alone has to begin.

14. The facts of *Lingasamy* case was entirely on different footing. There were multiple issues and one of the issues was where the defendant claimed right under a Will to non suit the plaintiff. Considering that other defences were available, this Court held that the defendant cannot be called upon to begin and lead evidence at the first instance to prove the Will.

15. Insofar as the decision of the Hon'ble Supreme Court in *Jami Venkata Suryaprabha's case*, it was a case where the agreement of sale was not disputed in a suit for specific performance and the plaintiff sought for a direction to the



defendants to begin and lead oral evidence. The Trial Court as well as the High

Court rejected the application filed by the plaintiff. However, the Hon'ble

Supreme Court held that the determination of the question as to which party

has a right to begin, it is an integral part of hearing itself and it would depend

on the facts and circumstances of each case. It has been further held that if the

Court finds that the defendant's plea strikes at the root of the plaint, then there

would be no hitch in asking the defendants to prove such plea first which can

lead to disposal of the case. The Hon'ble Supreme Court further held that there

can be no water tight compartmentalization in matters of justice and that all the

Rules of procedure are designed and directed to achieve and secure ends of

justice. On the facts of the said case, the orders of the Courts below were

confirmed by the Hon'ble Supreme Court, finding that though the agreement of

sale was admitted by the defendant, it was specifically alleged to be a sham

transaction.

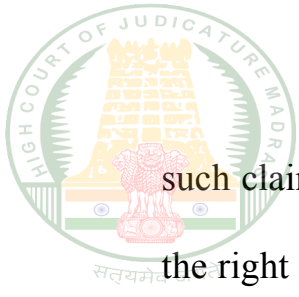
16.As rightly held by the Hon'ble Supreme Court, the right to begin

would depend on the facts and circumstances of the each case and in the

present case, the relationship between the parties is not disputed. They are

brothers and sisters and the plaintiffs have sought for partition and separate

possession of their shares in the suit property and the 1st defendant is denying

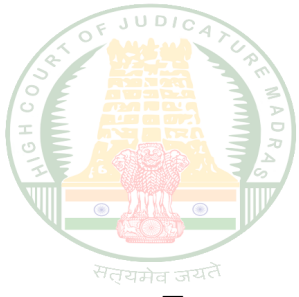


such claim based only on an oral family arrangement. In the light of the above, the right to begin is certainly with the defendant and there is no infirmity in the order of the Trial Court, directing the defendant to lead evidence first. I do not find any merit in the revision.

17. In fine, the Civil Revision Petition is dismissed. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

01.08.2025

Speaking/Non-speaking order
Index : Yes/No
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To

The II Additional District and Sessions Judge, Tiruppur.



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P.B.BALAJI.J.

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Pre-delivery order made in
CRP.No.2223 of 2025
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