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C.R.P.(PD) No.1212 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.03.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD) No.1212 of 2025

1.P.Jayanthi

2.Minor P.Nandika

Rep. by Guardian / Mother P.Jayanthi

... Petitioners

Vs.

C.Shivakumar

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order in I.A.No.1 of 2023 in G.O.P.No.101 of 2023 dated 09.09.2024 on the file of the II Additional District Court, Salem.

For Petitioners : Mr.V.Raghavachari, Senior Counsel
for Ms.S.Sowjanya

For Respondents : Mr.A.Sundaravadhanan



ORDER

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Challenging the order passed by the II Additional District Judge, Salem, in allowing the I.A.No.1 of 2023 in G.O.P.No.101 of 2023, filed by the respondent/third party to implead him as respondent in G.O.P.No.101/2023, the petitioners are before this Court.

2. The main Guardian O.P. has been filed by the first revision petitioner seeking permission of the Court to sell her minor daughter's 1/12th share in the suit schedule properties to the agreement holders namely Ramachandran and Pachamuthu. The petitioner would submit that she and her minor daughter are now residing at Perth, Australia and her daughter is pursuing her studies in Australia. The suit schedule property was the joint family property of her husband Palaniappan. The property originally belonged to her father-in-law Chandrappan and his siblings. The said Chandrappan had married one Rajambal, and out of their wedlock, Palaniappan and Mangayarkarsi was born. Palaniappan had married the revision petitioner in 2006, and out of the wedlock, a female child Nandhika was born. Mangayarkarasi got married to the respondent herein and she



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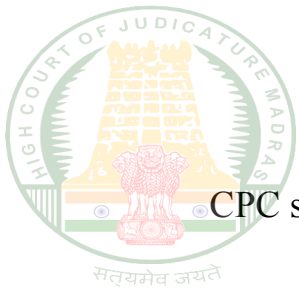
died issueless on 19.07.2001 in a suspicious circumstance. The husband of the revision petitioner namely Palaniappan died on 15.11.2015, her father-in-law Chandrappan died on 05.09.2017, and thereafter, her mother-in-law, Rajambal died on 11.05.2021. Therefore, except the revision petitioner and her minor daughter, there are no other legal heirs surviving for the deceased Chandrappan, Rajambal and Palaniappan.

3. According to the petitioner, she and her daughter together have a common 1/6th share in the suit schedule properties. In other words, the petitioner and her minor daughter owns 1/2th share each in the suit schedule property, and the remaining 5/6th share (10/12th share) belongs to the other co-shares, who are the brothers and sisters of deceased Chandrappan. The first revision petitioner would submit that as she and daughter are living in Australia, she is not in a position to maintain the suit property and that part, to meet out her daughter's educational expenses and their living expenditure at Australia, which incurs a huge sum, she had decided to sell her minor daughter's share in the suit schedule property. Hence, she had filed GOP.No.101 of 2023 before the District Court, Salem, seeking leave of the Court to sell her minor daughter's share. While the same was pending



consideration, the third party/respondent herein (husband of Mangayarkarasi) had come forward with an application in I.A.No.1 of 2023 to implead himself as a respondent in GOP.No.101 of 2023.

4. In the affidavit filed in support of the application in I.A.No.01/2023, it is contended by the respondent herein that since the subject properties are the ancestral properties of his father-in-law, Chandrappan, he is entitled to have a half share over the entire properties, being the husband of Mangayarkarasi, the daughter of Chandrappan and therefore, had demanded for a partition and to allot a share to him. Since his demand was not considered, he filed a suit for partition in O.S.No.224/2023 on the file of Additional District Court, Salem, against the revision petitioners. According to the respondent herein, the first revision petitioner after receipt of summons in O.S.No.224/2023, instead of filing a written statement, has filed an application in GOP.No.101/2023, without adding him as a party. According to him, he is an essential and necessary party to the said GOP. His further contention is that the revision petitioners are only attempting to deprive him of his rights to the suit property and therefore, he had come forward with an application under Order I Rule 10



CPC seeking to implead him as party-respondent in GOP.No.101.2023.

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5. The first revision petitioner had filed a counter in I.A.No.01/2023, *inter alia* contending that the property was a joint family property and after the family partition that took place between Chandrappan and his siblings, the subject property came to be allotted to Chandrappan. Chandrappan had two children namely Palanippan and Mangayarkarasi. Palaniappan had married the first revision petitioner and out of the wedlock, they had begotten a female daughter Nandhika, the second revision petitioner herein, who is a minor. Mangayarkarasi had married the respondent herein on 14.04.2000 and after a year, she had passed away issueless, in a suspicious circumstance. The said Mangayarkarasi had not only pre-deceased her parents but her brother Palanippan, the husband of the first revision petitioner. Thereafter, the respondent had never bothered to keep in touch with his in-laws family and even immediately on the demise of his wife, he had contracted a second marriage and now seeks to claim a share in the property of his deceased first wife. Since Mangayarkarasi had pre-deceased her parents and her brother, she has no share in the family properties and consequently, her husband, the respondent herein, has no



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right over the properties. Therefore, the proposed party/respondent herein is neither a necessary nor proper party to the proceedings in GOP, the first revision petitioner had sought for the dismissal of the said application filed for impleadment.

6. The learned II Additional District Judge, Salem, in her order dated 09.09.2024, has held that in the instant case a suit is filed by the third party/respondent for partition in O.S.No.224/2023, wherein the subject property is also included. The said GOP is filed seeking permission of the Court to alienate the property by the revision petitioners, and assuming that the original petition is allowed, and the revision petitioners are permitted to alienate the property, the respondent/third party's right in the original suit would stand affected and the present subject property may not be available for partition. Therefore, the learned trial Judge had proceed to allow the application in I.A.No.01/2023. Aggrieved by the same, the revision petitioners are before this Court.

7. Heard the learned counsel on either side and perused the materials placed before this Court.



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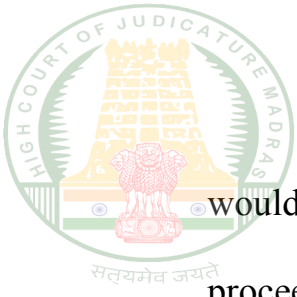
8. It is an undisputed fact that Chandrappan was in possession of the subject property along with certain other properties, after the family partition that took place among his siblings. It is also admitted that Chandrappan and his wife Rajambal had two children namely Palaniappan and Mangayarkarasi. Palaniappan had married the first revision petitioner and a female child namely Nandhika, the second revision petitioner was born to them out of the wedlock. Mangayarkarasi was married to the respondent herein. Mangayarkarasi, the daughter of Chandrappan and Rajambal and the erstwhile wife of the respondent / proposed third party had passed away on 19.07.2011. Palaniappan, the husband of the first revision petitioner and the father of the second revision petitioner had died on 15.11.2015. Chandrappan who is the father-in-law of the first revision petitioner had passed away on 05.09.2017. Rajambal, the wife of Chandrappan and the mother-in-law of the first revision petitioner had died on 11.05.2021. Since, Palaniappan had pre-deceased his parents, his share in the property devolved on the revision petitioners herein and his mother Rajambal. Since Chandrappan had died on 05.09.2017, subsequently the estate of Chandrappan had devolved only on his wife and the legal heirs of



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his deceased son and not on his daughter Mangayarkarasi, who had pre-deceased her father. Rajambal too died on 11.05.2021. Therefore, on the death of Rajambal in the year 2021, the property devolved only upon the revision petitioners, who are the daughter-in-law and grand-daughter of Rajambal. Since the respondent's wife Mangayarkarasi does not inherit any family property from her father, the respondent cannot claim right and title through his wife Mangayarkarasi. This apart, the first revision petitioner who is the only guardian of her minor daughter namely the second revision petitioner, is only seeking leave of the Court to alienate the share of her minor daughter in G.O.P.No.101 of 2023. Therefore, the proposed party, namely the respondent herein has no right to claim to be a party to the GOP proceedings.

9. Accordingly, the order in I.A.No.01/2023 dated 09.09.2024 impleading the respondent herein as a party to the said GOP proceedings warrants interference of this Court as he is neither a necessary nor a proper party to the said proceedings. In the event of the third party/respondent herein succeeding in the partition suit in O.S.No.224/2023 on the file of III Additional District Judge, Salem filed by him, his rights under the decree



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would flow only subject to the outcome of the said suit and not in the GOP proceedings. In such a situation, the respondent herein is not a necessary party to be impleaded in the GOP application, as he has no locus standi to defend the said application filed the first revision petitioner seeking leave of the Court to alienate her minor daughter share, as a guardian of the minor.

10. To conclude, the revision petition is allowed and the order of the II Additional District Judge, Salem in I.A.No.1 of 2023 in GOP.No.101 of 2023 dated 09.09.2024 is set aside. No costs.

26.03.2025

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes / No
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To:

- 1.The II Additional District Judge
Salem.
- 2.The Section Officer
VR Section, High Court, Madras.



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P.T. ASHA, J.

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