



CRP No. 1988 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 02.07.2025

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

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and

CMP No.11438 of 2025

Mrs. Xavier Juliana Vaz (died)

1. Mrs. Virginamma Fernando

2. Mrs. Eugin Fernando

Vs.

... Petitioner

1. Mrs. Brigin Fernando

2. Mrs. Marcilla Brigin Fernand

Mr. Benildar Nirmal Fernando (died)

Mr. Francis Newton Fernando (died)

3. Mr. Bernard Newein Fernando

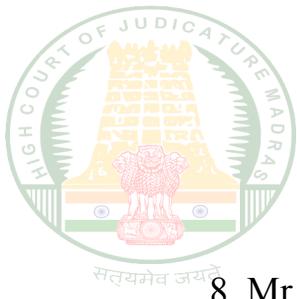
4. Mr. Francis Nixon Fernando

5. Mrs. N. Auxillia

6. Mrs. N. Mary Monica

7. Mr. N. Infant Sylvester Ruban

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8. Mr. Silvestor Thomas Fernando

9. Mr. Charles Dixon Fernando

...

Respondents

Prayer : Civil Revision petition has been filed under Section 115 of CPC to set aside the fair and decreetal order dated 02.01.2025 in I.A.No.7 of 2023 in I.A.No.1 of 2019 in O.S.No.2821 of 2013 on the file of the V Additional City Civil Court, Chennai.

For Petitioner : Mr. S. William

For respondents : Mr.G. Veerapathiran
for R1 to R4, R8, R9

ORDER

Challenge has been made to the order passed in I.A.No.7 of 2023, wherein the petitioners sought to implead one of the settlees as 10th respondent in a final decree proceedings.

2. The suit has been originally filed by one Xavier Juliana Vaz,



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Virginammal Fernando, and Eugin Fernando as plaintiffs for partition and permanent injunction in O.S.No.2821 of 2013 on the file of the V Additional City Civil Court, Chennai. By order dated 12.09.2015, the suit was partly allowed and a preliminary decree was passed declaring the rights of the parties in various items of the suit properties.

3. During the final decree proceedings, it appears that the first plaintiff executed a settlement deed in favour of the second plaintiff in respect of certain suit items on 07.08.2017 and also executed a Will on 25.03.2019. Similarly, some of the defendants also executed settlements. The first plaintiff has also settled her $\frac{1}{2}$ share in the first item of the suit property in favour of her Grand son, N.Silvestor Thomson Fernando, by way of a settlement deed dated 26.11.2013. He is, therefore, a beneficiary under the settlement executed by the first plaintiff.

4. An application was filed in I.A.No.7 of 2023 to implead him as a party. Although the respondents did not object to his impleadment as the 10th respondent in the final decree proceedings, the Trial Court, by order dated 02.01.2025, dismissed the said application. Aggrieved by the said order, the



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present revision has been filed.

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5. Heard both sides and perused the materials available on records carefully.

6. It appears that the Trial Court proceeded as if the application was filed to amend the preliminary decree and gone into the issue of validity of the documents. Though counter has been filed questioning the settlements and Will, the crux of the prayer sought in the application was only to implead the 10th respondent. However, the Trial Court has gone into the other issues and dismissed the application.

7. Both sides have now fairly submitted that, as far as the impleading petition is concerned, there is no objection. It is submitted that the impleading application may be allowed and rest of the matters, with regard to the validity of the settlements and Will, may be decided separately. It is further submitted that the present final decree petition will be withdrawn and a fresh application will be filed.

8. The said submission is recorded.



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9. In such view of the matter, this Court is of the view that nothing survives in this revision. However, liberty is granted to the petitioners to file a fresh application by impleading all assignees or transferees in accordance with law and if necessary, they may also seek amendment of the preliminary decree also.

10. With the above observations, this civil revision petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

02.07.2025

mrp

To

V Additional City Civil Court, Chennai.



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N. SATHISH KUMAR, J.

mrp

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