

*CMP. No.13627 of 2024
and A.S.No.419 of 2023*

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.06.2025

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CMP. No.13627 of 2024

and

A.S.No.419 of 2023

Selvam (Alias) Selvakanth

... Petitioner

-Vs-

1. Dr.P.Chinnaiyan

2. Sholachana Devi

3. Vaishnavi Priya

4. Viji

5. Pradeep Baskar

Mariyayee (Died)

6. Subramani

7. Rajesh

8. Sumathi

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9. Vanitha
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10. Sangeetha

11. Baby ... Respondents

Prayer:- Civil Miscellaneous Petition filed under Order 41 Rule 4 and Order 23 Rule 1(A) of Civil Procedure Code to allow this Petitioner/Second Appellant to transpose as Respondent in A.S.No.419 of 2023.

A.S.No.419 of 2023:-

1. Smt. Baby

2. Selvam (Alias) Selvakanth ... Appellants

-Vs-

1. Chinnaiyan

2. Sholachana Devi

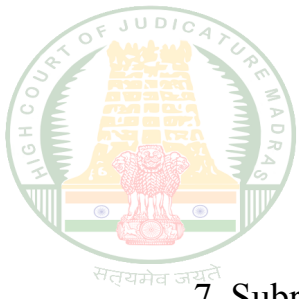
3. Vaishnavi Priya

4. Viji

5. Pradeep Baskar

6. Mariyayee (Died)

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7. Subramani
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8. Rajesh

9. Sumathi

10. Vanitha

11. Sangeetha

(R-6 died, R-8 to R-11 are brought
on record as Lrs of deceased R-6 vide
Order of Court dated 14.08.2024
made in CMP.No.15515 of 2024
in A.S.No.419 of 2023)

... Respondents

Prayer:- Appeal Suit filed under Section 96 r/w. Order 41 Rule 1 of CPC, to
set aside the Decree and Judgment dated 13.10.2022 in O.S.No.09 of 2016
passed by the learned Principal District Judge, Perambalur.

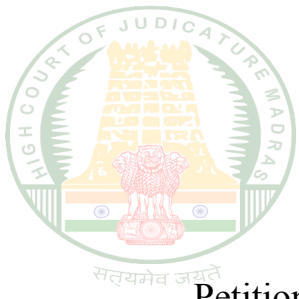
For Petitioner : Mr.Sreedhar
for Mr.Venkatakrishnan
in CMP.No.13627 of 2024

For Respondents : Dr.A.E.Chelliah
Senior Counsel for
Mrs.Vasanthakumari Chellaih for R-1

ORDER

This Civil Miscellaneous Petition has been filed to allow this

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Petitioner/Second Appellant to transpose as Respondent in A.S.No.419 of 2023.

2. The first Appellant had filed counter objecting to the Petitioner on the ground that the Appellants herein were the Defendants in the Suit in O.S.No.9 of 2016 stating that the second Appellant to transpose and adopt a position contrary to their original defence would result in an inconsistent and conflicting stand and hence there is a necessity of maintaining consistency in the stand of the parties during litigation to prevent prejudice and misuse of the judicial process.

3. Also, it is the contention of the learned Counsel for the Respondent/first Appellant that the second Appellant is now intending to take a different stand contradicting his statements gave in trial before the trial Court. It is a well-settled principles of law that one should not be allowed to contradict his own statement for reaping the fruits of his own wrongs. Also, the conduct of the Petitioner/second Appellant attracts



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principle of estoppel. A litigant can take different stand who cannot take contrary stand in the same case. A party cannot be permitted to approbate and reprobate on the same facts and taken inconsistent shifting stands. If this transpose Petition is allowed, it would defeat the procedures and reasoning of the trial Court. Permitting transpose Petition will lead to unnecessary complications and prolong the litigation. The attempt of the second Appellant is irreparable harm and prejudice to the other parties by affecting the judicial proceedings. Therefore, the learned Counsel for the first Appellant seeks to dismiss this Petition. In support of his contention, the learned Counsel for the first Appellant relied on the following rulings:-

(i) In the case of **Jagbandhu Vs. Haris Chandra (AIR 1922 Cal. 459)**. The relevant portion reads as follows:-

“..... if the defendant's application for transposition as plaintiffs was accepted, it would have been necessary for the added plaintiffs to discard the entire evidence on record and succeed on a case which not only was made in the Court of first instance, but absolutely contradictory to the evidence put forward.”

(ii) In the case of **Ramaswami Vs. Deivasigamani (AIR 1947 Madras 395)**. The relevant portion reads as follows:-



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“ But, in a case of this kind, where defendant 8 was setting up title adverse to the plaintiff on the one hand and defendants 1 to 7 on the other it was wholly improper to have made him a co-plaintiff and given him a decree in addition at the penultimate stage of the trial”

(iii) In the case of ***Madaka Anjaneyulu Vs. Madaka Balaiah & Ors***
(2001 (1) ALJ 172).

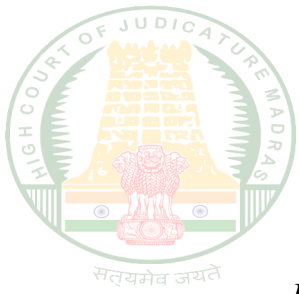
(iv) In the case of ***Suzuki Parasrampuriah Suitings Private Limited Vs. Official Liquidator of Mahendra Petrochemicals Limited (in Liquidation) ((2018) 10 SCC 707).*** The relevant portion is extracted hereunder:-

“ A litigant can take different stands at different times but cannot take contradictory stands in the same case. A party cannot be permitted to approbate and reprobate on the same facts and take inconsistent shifting stands.”

(v) In the case of ***Amar Singh Vs. Union of India ((2011)7SCC 69).***

The relevant portion reads as follows:-

“This Court wants to make it clear that an action at law is not a game of chess. A litigant who comes to Court and invokes its writ jurisdiction must come with clean hands. He cannot prevaricate and take inconsistent positions.”



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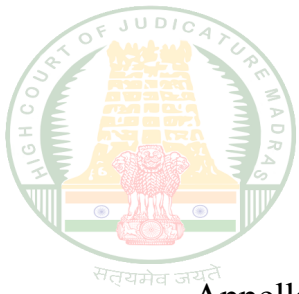
Point for consideration:-

***Whether the Second Appellant is to be transpose
as a Respondent in the Appeal?***

4. Heard the learned Counsel for the Petitioner and the learned Counsel for the first Respondent.

5. Perused the records.

6. The Appeal is filed by the Defendants 2 and 3 in O.S.No.9 of 2016 on the file of the learned Principal District Judge, Perambalur. The Plaintiffs are the Respondents. CMP.No.13627 of 2024 in A.S.No.419 of 2023 is filed by the Defendant-3 in O.S.No.9 of 2016 on the file of the learned Principal District Judge seeking to transpose the second Appellant as Respondent in the Appeal on the ground that after the decree, the second Defendant claimed that a Will had been executed by the father of the Defendants 2 and 3 in favour of the second Defendant regarding the Suit properties which she had not disclosed at the time of trial. Therefore, he seeks to be transposed as Respondent in the Appeal. The Respondent/first



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Appellant filed a counter objecting to the Petition to transpose on the ground that the second Appellant cannot be permitted to make an inconsistent stand before the trial Court and the Appellate Court stating that the party to proceedings should be consistent throughout all stages in the said cases in all stages. Also, the learned Counsel for the Respondent had relied on rulings in the case of *Jagbandhu Vs. Haris Chandra (AIR 1922 Cal. 459)*; in the case of *Ramaswami Vs. Deivasigamani (AIR 1947 Madras 395)*; in the case of *Madaka Anjaneyulu Vs. Madaka Balaiah & Ors (2001 (1) ALJ 172)*; in the case of *Suzuki Parasrampuriah Suitings Private Limited Vs. Official Liquidator of Mahendra Petrochemicals Limited (in Liquidation) ((2018) 10 SCC 707)*; and in the case of *Amar Singh Vs. Union of India ((2011) 7 SCC 69)* in which the transpose Petitions were allowed in cases where there is a common claim by all the parties either as Plaintiffs or as Defendants. Here, the Petition is filed by the third Defendant before the trial Court. The second and third Defendant had filed a written statement. The Defendants 1 to 3 in the Suit are elder brother, wife and children of the Plaintiff. The third Defendant/Petitioner herein had filed the written



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statement disputing the claim of the Plaintiff regarding the Suit properties which is also the claim of the Defendants 1 to 3. Petitioners 1 to 3 had filed a written statement, which was adopted by Defendants 1 and 2, with a specific claim that the mother of the Defendants 2 and 3/Rajammal, purchased the property and that it is her self-acquired property. In the Judgment, the learned Principal District Judge had held that Ex.B-3, Ex.B-5, Ex.B-7 and Ex.B-8 had proved that the husband of the first Defendant and father of the Defendants 2 and 3 had independent income and the sale deed in Ex.A-4, Ex.A-6, Ex.A-7 and Ex.A-8 cannot be termed as Suit properties purchased in the name of Mechale and Rajammal, out of the income from Suit Item Nos.1 and 2. Therefore, based on the appreciation of the evidence, the learned Principal District Judge had granted a preliminary decree for partition of Item Nos.1 and 2 alone to the Plaintiff and dismissed the Suit regarding Item Nos. 3 to 9. Therefore, Defendants 2 and 3 have now come in Appeal seeking to set aside the Judgment regarding the share allotted to the Plaintiff. Pending Appeal, if the second Appellant is permitted to give a contrary claim, as pointed out in the counter of the first Appellant, the same

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cannot be permitted in the Appeal which is the continuation of the proceeding in O.S.No.9 of 2016. If that is allowed, the entire evidence let out by the Defendants in O.S.No.9 of 2016 has to be set aside which causes confusion as stated by the Respondent in the counter. The conduct of second Appellant attracts the principle of estoppel taking an inconsistent stand which cannot be accepted in the light of the principle of estoppel. The conduct of the Petitioner seeking to transpose himself as Respondent cannot be permitted in the light of the rulings in the case of ***Suzuki Parasrampuriah Suitings Private Limited Vs. Official Liquidator of Mahendra Petrochemicals Limited (in Liquidation) ((2018) 10 SCC 707:(2018) 12 SCR 906)***. The relevant portion is extracted hereunder:-

“A litigant can take different stands at different times but cannot take contradictory stands in the same case. A party cannot be permitted to approbate and reprobate on the same facts and take inconsistent shifting stands. The untenability of an inconsistent stand in the same case was considered in Amar Singh Vs. Union of India, (2011) 7 SCC 69, observing as follows:-

50. This Court wants to make it clear that an action at law is not a game of chess. A litigant who comes to Court and invoke its writ jurisdiction must come with clean hands. He cannot prevaricate and take inconsistent positions.

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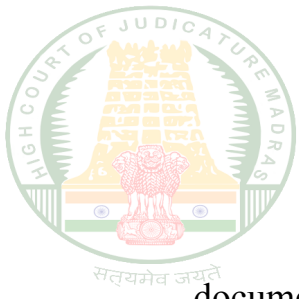
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13. A similar view was taken in *Joint Action Committee of Air Line Pilots' Assn. Of India Vs. DG of Civil Aviation*, (2011) 5 SCC 435, observing:

12. The doctrine of election is based on the rule of estoppel – the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is rule in equity..... Taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily.”

As pointed out in the rulings this Petition, if allowed causes confusion. Therefore, this Petition is dismissed as having no merits.

7. The rulings cited in the case of ***Suzuki Parasrampuriah Suitings Private Limited Vs. Official Liquidator of Mahendra Petrochemicals Limited (in Liquidation)*** ((2018) 10 SCC 707:(2018) 12 SCR 906) by the learned Counsel for the Petitioner are not applicable to the facts of this case as the facts are in different context. Here, the Petitioner herein was the contesting Defendant before the trial Court. He had filed written statement which was adopted by the first and second Defendant/mother and sister of this Petitioner. Based on the evidence let in by this Petitioner and the



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documents marked by this Petitioner, the learned Principal District Judge had dismissed the Suit for partition filed by the first Respondent in this Appeal as Plaintiff before the trial Court regarding the Suit properties Nos.3 to 9. The plea of the petitioner that the claim of the sister that a Will had been executed by their mother in favour of the sister of the Petitioner and which was not disclosed by her during trial, will not affect in anyway the appreciation of evidence. In this Appeal, the said Will had not at all been placed before the trial Court. If at all, the Petitioner is prejudiced, he has to seek remedy in a separate Suit and not in this Appeal as the said Will was not at all marked during trial before the trial Court. Therefore, the Point for consideration is answered against the Petitioner and in favour of the Respondent/first Defendant.

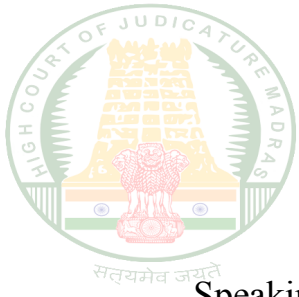
In the result, this ***Civil Miscellaneous Petition is dismissed. No costs.***

03.06.2025

dh

Index : Yes/No

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Speaking/Non-speaking order

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To

1. The Principal District Judge,
Perambalur.
2. The Section Officer,
V.R.Section,
High Court, Madras.

SATHI KUMAR SUKUMARA KURUP, J.,

dh

Pre-delivery Order made in
C.M.P.No.13627 of 2024



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in
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SATHI KUMAR SUKUMARA KURUP, J.

This case is listed today under the caption “for being mentioned” at the instance of the learned Counsel for the Respondent in the C.M.P.

2. Learned Counsel for the Respondent in the C.M.P would submit that in the Order copy dated 03.06.2025 in Page 3 of the Order in the Appearance portion, the name of the learned Counsels had been wrongly mentioned.

3. Based on the submission of the learned Counsel for the Respondent

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in the C.M.P, the below changes are to be effected in the appearance portion
in Page 3 of the Order.

For Petitioner	:	Mr.Ahamed Rhilah
For Respondents 1 to 10	:	Mr.K.Ramanujam
For Respondent 11	:	Mr.A.M.Venkatakrishnan

4. Registry is directed to record the same and issue fresh order copy of
the order.

16.07.2025

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16.07.2025