



C.R.P.(PD)NO.3894 OF 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19/09/2025

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THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.R.P.(PD)NO.3894 OF 2019
and CMP Nos.26795, 26796 and 26797 of 2024
and C.M.P.No.25691 of 2019

Saraswathi ... Petitioner / 2nd Respondent/
 2nd defendant

Vs.

Kuppusamy (died)

1.Peramayammal

2.K.P.Narayanasamy (died)

3.K.P.Kumarasamy

4.K.P.Thangaraj

5.K.Kamalam

6.K.Baskaran

7.K.Thangavel

...

Respondents 1 to 8/
 Petitioners 2 to 8 /
 Plaintiffs 1 to 8

8.Ammami @ Ramayee

9.Santhosam

10.Chinnasamy Gounder

11.Thirumalai Gounder

...

Respondents 8 to 11/
 Respondents 1, 3 to 5/
 Defendants 1, 3 to 5

12.Sumathy

13.N.Palanisamy

...

LR's of deceased Second
 Respondent

(Respondent No.2 died, Respondents 12 & 13 are brought on record as LR's of the deceased R2 viz., K.P.Narayanasamy vide order of Court dated September 19, 2025 in C.M.P.Nos.26795, 26795 and 26797 of 2024 in CRP.No.3894 of 2019)



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PRAYER : Civil Revision Petition filed under Section 227 of the Constitution of India, 1950, to set aside the fair and decreetal order passed in I.A.No.1 of 2019 in O.S.No.52 of 2010 on the file of 1st Additional Subordinate Judge, Erode dated August 20, 2019.

For Petitioner	:	Mr.Guruprasad Mr.C.Ramaraj
For Respondent Nos.1 to 10	:	Served - No appearance
For Respondent No.11	:	Mr.Kaithamalai Kumaran
For Respondent Nos.12 & 13	:	Notice dispensed by this order

ORDER

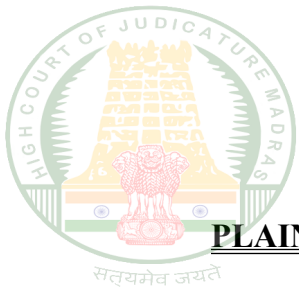
This Civil Revision Petition is filed assailing the Order dated August 20, 2019, made in a petition under Order VI Rule 17 of the Code of Civil Procedure, 1908 in I.A.No.1 of 2019 in O.S.No.52 of 2010 on the file of the I Additional Sub Court, Erode, by the second respondent in that Interlocutory Application.



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WEB COPY 2. During the pendency of this Civil Revision Petition, the second respondent herein / third plaintiff - K.P. Narainasamy leaving behind daughter - Sumathi and son - Palanisamy. Civil Miscellaneous Petition Nos.26795, 26797 and 26796 of 2024 were filed to condone the delay of 154 days, to set aside the abatement, and to implead his legal heirs respectively. The same are hereby allowed. In view of the nature of the petition, this Court is of the view that no notice to the legal heirs of second respondent / third plaintiff is necessary in this Civil Revision Petition. It is made clear that these Civil Miscellaneous Petitions are ordered without any prejudice to the rights / claim, if any, of the legal heirs of second respondent / third plaintiff. Registry is directed make the necessary amendments to the Civil Revision Petition.

3. The revision petitioner herein is the second defendant in the main Suit. The respondents 1 to 8 herein are the plaintiffs and the respondents 9 to 11 are the defendants 1, 3 to 5, in the main Suit. For the sake of convenience, the parties will be referred to as per their array in the main Suit.



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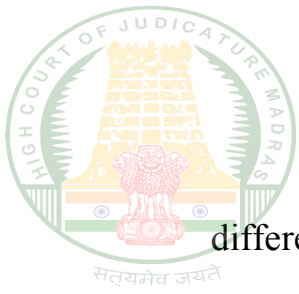
PLAINTIFFS' CASE

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4. The plaintiffs filed the main Suit for partition of their $\frac{1}{4}$ share in the suit properties. The case of the plaintiffs is that one Muthu and Kumarasamy are brothers. They jointly purchased the Suit Item No.1 and other items are their ancestral property. Both were entitled to $\frac{1}{2}$ share each in the suit properties.

4.1. Muthu passed away intestate 20 years ago; his wife - Marayammal predeceased him leaving behind Muthu, 'their son - Muthu' [hereinafter 'Junior Muthu' for convenience], another son - Perumal and one daughter - Kolandaiammal. Plaintiffs and third defendant are the legal heirs of Junior Muthu and Perumal. Defendants 1 and 2 are the daughters of Kumarasamy. The defendants 4 and 5 are the legal heirs of Kolandaiammal. Hence, the plaintiffs are together entitled to $\frac{1}{4}$ share in the suit properties.

4.2. The second defendant filed O.S.No.386 of 2017 on the file of Sub Court, Erode, against the plaintiffs and the others defendants except first defendant in the main Suit on hand. The suit properties therein are



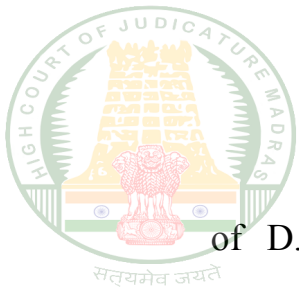
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different from the suit properties herein. The suit properties therein were purchased by Muthu and Kumarasamy by way of sale and thus, each of their branch is entitled to $\frac{1}{2}$ share in them. Kumarasamy executed a Will dated August 22, 1986 bequeathing his $\frac{1}{2}$ share in favour of second defendant herein (plaintiff therein) and hence, she filed that Suit seeking partition of her $\frac{1}{2}$ share. In these circumstances, the plaintiffs herein filed the aforesaid Interlocutory Application in I.A.No.1 of 2019 seeking to implead the suit properties therein in this Suit.

SECOND DEFENDANT'S CASE

5. Sum and substance of the written statement filed by the second defendant is that Kumarasamy executed a Will in respect of his $\frac{1}{2}$ share in the suit properties herein in his favour and first defendant has no right in it.

6. Her case as stated in the counter filed in the aforesaid Interlocutory Application is that separate trial should be conducted as first defendant is neither impleaded as a party nor is she a necessary party to her Suit in O.S.No.386 of 2017. Further, she objected that the Interlocutory Application has been filed at the stage of cross-examination



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of D.W.1. Stating so, the second defendant sought to dismiss the Interlocutory Application.

7. During enquiry, no oral evidence was adduced on either side. The plaintiffs who are the petitioners in the aforesaid Interlocutory Application, marked the plaint copy (Ex-P.1) in the Suit filed by the second defendant in O.S.No.386 of 2017. No document was marked on the side of defendants.

8. The Trial Court namely the I Additional Sub Court, Erode, upon hearing either side and perusing the records, concluded that though the amendment sought for by the plaintiffs is a post-trial amendment, the amendment would not lead to any change in the nature of Suit. Instead, it would enable the Court to effectively determine the rights of the parties in all the properties belonging to them. Upon these findings, the Trial Court allowed the Interlocutory Application.

9. Feeling aggrieved, the present Civil Revision Petition has been filed by the second defendant.



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WEB COPY 10. Mr.C.Ramaraj, learned Counsel for the revision petitioner /

second defendant would argue that the Trial Court allowed belated, post-trial amendment in a casual manner without application of mind. The plaintiffs only with a view to drag on the matter, filed the Interlocutory Application to implead the suit properties in O.S.No.386 of 2017. The first defendant - Ammani alias Ramayee has no right in the suit properties in O.S.No.386 of 2017 in view of Kumarasamy's Will. Hence, she is not a necessary party to the Suit in O.S.No.386 of 2017 and therefore, she was not impleaded there. The plaintiffs knowing well about the Will left by Kumarasamy, have wantonly impleaded the first defendant who is the sister of second defendant in this Suit, when she is not a necessary party here. In these circumstances, joint trial of both the Suits is an unnecessary exercise prejudicial to the interest of second defendant. No prejudice would be caused if both the Suits are tried separately. By way of the amendment permitted by the Trial Court, joint trial has been ordered impliedly. Accordingly, he would pray to allow the Civil Revision Petition and set aside the Order made in Interlocutory Application permitting the plaintiffs to implead the suit properties in O.S.No.386 of 2017.



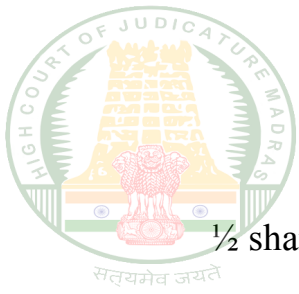
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WEB COPY 11. Though notice was served, respondents 1 to 8 / plaintiffs and respondents 9 and 10 / defendants 1 and 3 did not choose to contest the Civil Revision Petition. Only eleventh respondent / fifth defendant is contesting the Civil Revision Petition.

12. Mr.Kaithamalai Kumaran, learned Counsel appearing for eleventh respondent / fifth defendant submits that the parties are substantially one and the same in both the Suits. According to the revision petitioner / second defendant, she is entitled to $\frac{1}{2}$ share in the suit properties in both Suits. There is no illegality in allowing the amendment petition. Accordingly, he prays to dismiss the Civil Revision Petition.

13. Heard on either side. Perused the records.

14. From the reading of the plaints in both the Suits, it is discernible that the parties are deriving title from Muthu and Kumarasamy who were originally entitled to $\frac{1}{2}$ share each in both the suit properties. The second defendant who is the plaintiff in O.S.No.386 of 2017 claims

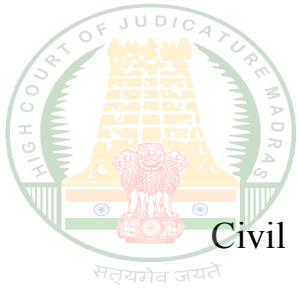


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1/2 share in both the suit properties on the basis of the Will executed by her father - Kumarasamy. Anyway, the second defendant is bound to prove the Will as per law. The presence of first defendant / sister of second defendant would not cause any prejudice to the second defendant as the first defendant has every right to contest the Will. Needless to state that the defendants are at liberty to state their defence by way of additional written statement. Hence, no prejudice would be caused to the defendants in any manner in permitting post-trial amendment. Therefore, the Trial Court with a view to decide the rights of the parties in an effective and efficient manner and to avoid multiplicity of proceedings, allowed the Interlocutory Application and permitted the plaintiffs to implead the suit properties in O.S.No.386 of 2017. This Court finds no irregularity or illegality with the Order of the Trial Court in the Interlocutory Application. Thus, this Civil Revision Petition must fail as devoid of merits.

15. Resultantly, this Civil Revision Petition is dismissed. In view of the facts and circumstances of this case, there shall be no order as to costs. Consequently, connected C.M.P.No.25691 of 2019 is closed. Connected



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Civil Miscellaneous Petitions are allowed as stated *supra* in Paragraph

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19/09/2025

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
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To
The 1st Additional Subordinate Judge,
Erode.



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R. SAKTHIVEL, J.

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