



CRP.No.4646 of 2025 and CMP.No.23525 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

CRP.No.4646 of 2025

and

CMP.No.23525 of 2025

Rajamani

... Petitioner / Petitioner / 2nd defendant

Versus

Poongothai

... Respondent / Respondent / Plaintiff

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair order and final order dated 15.07.2025 passed in I.A.No.3 of 2024 in O.S.No.30 of 2015 on the file of the II Additional District Court, Erode, Erode District.

For Petitioner

: Mr.J.Titus Enock

ORDER

Unsuccessful second defendant has preferred the present Civil Revision Petition.



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2. The suit in O.S.No.30 of 2015 was filed seeking a declaration that the settlement deed dated 22.03.1990 executed by the first defendant in favour of the third defendant, in respect of the second item of the suit property, is null and void. The plaintiff also sought a declaration that the settlement deed dated 15.12.2000 executed by the first defendant in favour of the second defendant, in respect of the third item of the suit property, is null and void; and further, a declaration that the settlement deed dated 23.07.2010 executed by the first defendant in favour of the first plaintiff, in respect of the third item of the suit property, is null and void. The plaintiff also prayed for division of the first item of the suit property into six equal shares by metes and bounds and for a permanent injunction. The defendants filed their written statement, and necessary issues were framed. After completion of the plaintiff's side evidence, the case was posted for the defendant's side evidence. The second defendant / Rajamani, himself examined as D.W.1, his examination in chief was partly completed, and he was partly cross-examined. The case was posted for further cross examination of D.W.1 on



07.03.2025. At that stage, the second defendant filed an application in I.A.No.3 of 2025 in O.S.No.30 of 2015 under Section 151 of the CPC, seeking to reopen the evidence of D.W.1 for further examination in chief. Upon hearing either side, the Court below dismissed the application on the ground that the second defendant could not examine D.W.1 in a piecemeal manner at his whims and fancies. The Court below further held that the second defendant could not seek reopening of the case and recall of D.W.1 for further examination-in-chief after a lapse of nearly four years, especially when there is no sufficient reasons were put forth. The Court below also relied upon the judgment of the Hon'ble Supreme Court of India in ***K.K.Velusamy Vs.N.Palaanisamy*** reported in **2011 (11) SCC 275**. Aggrieved over the same, the revision petitioner has preferred the present Civil Revision Petition.

3. The learned counsel appearing for the revision petitioner would submit that the Court below failed to see that, upon impleading the second plaintiff, an additional written statement was filed by the second defendant and additional issues were framed, namely, "whether interest of the second



defendant is prejudiced by adding the second plaintiff as a party, as the legal heir of the first plaintiff". The learned counsel further submitted that the Court below ought to have granted an opportunity to adduce evidence in respect of the additional issue framed, after the suit was posted for DW1 cross examination. The learned counsel also submitted that the delay in the progress of the suit was not caused by the revision petitioner / second defendant, but rather due to the non availability of the Judicial Officer from 2022 onwards. The learned counsel further submitted that the Court below failed to note that this is not a case of piecemeal examination of chief, but pertains to evidence to be tendered on the additional issue. Further, the Court below failed to consider that the claim for partition by the original plaintiff is based on his status as a coparcener of the joint family property, whereas the second plaintiff is not a coparcener. Therefore, the additional issue framed is not a pure question of law but a mixed question of fact, necessitating the adducing of further evidence on behalf of the second defendant. The learned counsel further submitted that the Court below also failed to note that the second defendant, who is the father of the original plaintiff and husband of the second plaintiff, is already on the array of



parties in the suit. Hence, it is a factual issue requiring further evidence from the second defendant's side. Accordingly, the order passed by the Court below dismissing the petition is arbitrary, contrary to law, and liable to be set aside.

4. It is seen from the records that the revision petitioner had examined himself as D.W.1 in the suit. The records further shows that the second respondent / Poongothai, has been impleaded as second plaintiff, and subsequently, the revision petitioner / second defendant filed a detailed additional written statement in response. The respondent / plaintiff also filed reply statement. The Court below thereafter framed an additional issues, namely, "Whether interest of the second defendant is prejudicial by adding the second plaintiff as a party, as the legal heir of the first plaintiff?."

5. It is seen from the records that the revision petitioner / second defendant had filed a proof affidavit on 30.01.2018, which was recorded as the chief examination of D.W.1. On application, the evidence of D.W.1 was reopened, and D.W.1 was further examined in chief on 14.02.2018. On 09.03.2018, D.W.1 was fully cross examined by the plaintiff's side, and the



case was posted for arguments. Subsequently, the third defendant filed an application to set aside the proceedings, which was allowed. Thereafter, on 12.12.2018, the D.W.1 was recalled on an application for cross examination by the third defendant. D.W.1 was partly cross examined by the third defendant's side. However, D.W.1 did not appear for further cross examination from 01.04.2020 to 23.01.2021. The Court below also noted that additional issues was framed on 24.02.2022. Even, thereafter, D.W.1 failed to appear for cross examination from 05.03.2022 to 14.03.2025. It is seen from the records that the additional written statement of the second defendant was filed on 04.09.2018. Further, on 12.12.2018, D.W.1 was recalled on application for cross examination by the third defendant's side and was partly cross examined on 08.03.2019, subsequently to the filing of the additional written statement. The Court below found that sufficient opportunities had been granted to the revision petitioner/second defendant for examination in chief, and the second defendant could not be permitted to examine D.W.1 in chief in a piecemeal manner at his own whims and fancies. When the case was posted for the defendant's side, after completion of the cross examination by the plaintiff and the third defendant, the revision



petitioner / second defendant could not seek to reopen the case or recall D.W.1 for further chief examination, particularly after a lapse of more than three years.

6. The affidavit filed by the revision petitioner does not disclose any acceptable reason. It is stated therein that the Court below has framed an additional issue in the suit and that the case is posted for the evidence of D.W.1. Therefore, the revision petitioner claims that it is necessary to file an additional written statement on behalf of the second defendant. However, the second defendant had already filed an additional written statement in the year 2018, and after the cross examination by the third defendant's side, the present request to file a further chief examination is not acceptable.

7. In view of the above, there is no reason to interfere with the order dated 15.07.2025 passed in I.A.No.3 of 2024 in O.S.No.30 of 2015, pending on the file of the learned II Additional District Court, Erode, Erode District.



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8. Accordingly, this Civil Revision petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

26.09.2025

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Index : Yes/No

Speaking order : Yes/No

Neutral Case Citation : Yes/No

To

The II Additional District Court, Erode, Erode District.



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M. JOTHIRAMAN, J.

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