



C.R.P.No.202 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2025

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.No.202 of 2020
C.M.P.No.1124 of 2020

1.N.Meenakshi

2.Chitra

3.N.Kumaresan

...Petitioners

Vs

1.U.Kennady

2.M.Saraswathy

3.R.Susila

4.M.Mahendran (Died)

5.M.Ashokan

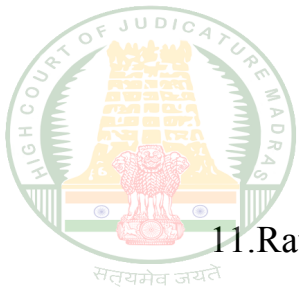
6.M.Somasundaram

7.M.M.RAma Manohar

8.Saraswathy

9.Jayalakshmi

10.Lavanya



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11.Rathinamala

WEB COURT 12.Pragathees

(Respondents 8 to 12 brought on record
as LR's of the deceased R4 viz Mr.M.Mahendran
vide Court order dated 06.02.2023 made in
C.M.P.No.19495 of 2021 in C.R.P.No.202 of 2020
by VBSJ) ...Respondents

PRAYER :- Civil Revision Petition is filed under Article 227 of the Constitution of India, pleaded to set aside the order dated 30.10.2019 made in I.A.No.58 of 2019 in O.S.No.47 of 2018 on the file of the Principal District Judge, Tiruvarur by allowing this CRP.

For Petitioners : Mr.A.V.Arun
For Respondent : No appearance (For R1- served)
R2- died (vide memo
in USR 16877)
R4-Died
M/s.S.T.P.Kuilmozhi
(For R3, 5, 7 to 12)

ORDER

The Civil Revision Petition is filed by the plaintiffs challenging the order passed in I.A.No.58 of 2019 in O.S.No.47 of 2018.

2.The facts are briefly set out herein below and the parties are referred to in the same ranking has before the trial Court:-



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The plaintiffs had filed the suit for partition and separate possession of their 1/7th share in the suit schedule property. The plaintiffs would submit that one Natarajan, is the husband of the first plaintiff and father of plaintiffs 2 and 3. The said Natarajan is the son of first defendant, brother of 2nd and 6th defendants. He was employed at the Neyveli Thermal Power Station as Executive Engineer and while in service had passed away on 21.03.1999 on account of a chronic illness. The said Natarajan had died intestate leaving behind him surviving the plaintiffs and the second defendant as his legal heirs. Therefore, they had succeeded to his share in the suit schedule property. The plaintiffs would submit that there was no partition of the properties and the first defendant on the death of Natarajan had orally relinquished her right, interest in the property in favour of the plaintiffs.

3.It is the case of the plaintiffs that Somu Pather, the father of the Murugaya Pather had bequeathed his properties in favour of the said N.Murugaiya Pather under a registered Will dated 21.08.1953. The said Murugaiya Pather ha2025d died on 20.01.1991 leaving behind his surviving mother Govindammal, his wife/first defendant, late Natarajan and defendants 2 to 6. Meanwhile Govindamal had also died and



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therefore Natarajan, his mother and his siblings were each entitled to 1/7th share. They would submit that items No.2 to 5 Nanja lands were acquired by Natarajan and defendants 1 to 6 under an exchange deed dated 21.04.1994 by exchanging the second item of property in the Will dated 21.08.1953. Therefore, the properties were all joint family properties and the plaintiffs were entitled to a share. Since the defendants were not coming forward to enter into a partition, the plaintiffs have come forward with the suit for partition.

4.The third defendant had filed a written statement *inter alia* denying the claim of the plaintiffs. The third defendant would submit that he is willing for the partition and would further state that defendants 3 and 4 and Natarajan had repaid the loans of the fifth defendant. The fifth defendant had started a chain manufacturing unit under the name and style of Mahendra Jewel Industry. They would submit that since the financial losses created by the fifth defendant had been repaid by the third defendant, late Natarajan and the fourth defendant the fifth defendant's share should be allotted to Natarajan, the third and fourth defendants.



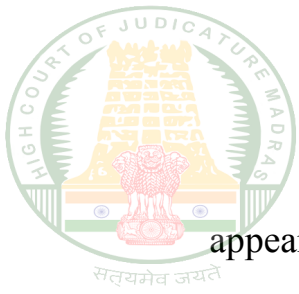
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5.While so, One Kennady, the first respondent herein had taken out an application for impleading himself as a party to the proceedings in I.A.No.58 of 2019. The said Kennady, the first respondent herein would seek to implead himself as a party to suit for partition stating that he had filed a suit for recovery of money against the fifth defendant in O.S.No.49 of 2018 in which he had filed an application for attachment in I.A.No.165 of 2018 and the same is pending without an order of attachment. Therefore, he sought to got himself impleaded in the suit for partition stating that he is a creditor of the fifth defendant. This application despite the objections by the plaintiffs as has been ordered. The learned Principal District Judge, Tiruvotriyur, has allowed the application on the ground that it could cause no prejudice to the parties and that there was a necessity to implead the third party so that he would be kept in the loop about the proceedings in the partition suit. Challenging the same, the plaintiffs are before this Court .

6.Heard the learned counsel for the petitioners and respondents 3, 5 and 7 to 11 and perused the records.

7.The first respondent herein though served has not entered



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appearance either in person or through counsel. The suit which the first respondent/third party has filed is one for recovery of money against the fifth defendant and his application for attachment before judgment has been kept pending without any orders. He now seeks to implead himself in a suit for partition in respect of properties over which he has no right. He only has a claim of money against the fifth defendant. The learned Judge has proceeded to allow this application only on the ground that by being impleaded as a party the first respondent would be in a position to be updated about the progress of the suit and it would not cause any prejudice to the party. The plaintiffs are the *dominus litis*. A party can be impleaded only where there is a relief claimed against or in his favour and where his presence is necessary for effectively and completely adjudicating and settling the issues involved in the suit. In other words he should be proper and necessary party to the proceedings. In case on hand, the first respondent is neither a co-owner of the property nor does he have any right, title or interest to the property in question. The right to recover money from the fifth defendant is yet to be decreed. Even assuming that the same has been decreed he has to file necessary applications for executing the decree. Therefore, he is neither proper nor necessary party to the proceedings and the learned Principal District



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Judge, Tiruvarur has erred in impleading the first respondent as party defendant in the suit. Order allowing I.A.No.58 of 2019 is *per se erroneous* and therefore, order dated 30.10.2019 made in I.A.No.58 of 2019 in O.S.No.47 of 2018 is set aside.

8.The Civil Revision Petition is allowed with the above directions.

No costs. Consequently, connected miscellaneous petition is closed.

19.02.2025

Index : Yes/No
Internet : Yes/No
Speaking Order/Non Speaking Order
ep

To

The Principal District Court, Tiruvarur.



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