



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:22.08.2025

Pronounced on: 29.08.2025

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THE HONOURABLE MR.JUSTICE P.B.BALAJI

**CRP. No.140 of 2025
and CMP. No.1085 of 2025**

1.S.Suganya
2.S.Ramgopal
3.S.Vaishnavi

Petitioners

Vs

K.Rajammal (Died)
1.K.Sivakumar
2.S.Suryakumari
3.S.Premnarayan
4.S.Uma Maheswari

Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and final order passed in I.A. No.9 of 2024 in O.S. No.210 of 2013 on the file of 1st Additional Sub Court, Erode, dated 21.08.2024.

For Petitioners : Mr.V.S.Kesavan

For Respondents : Mr.R.Ganesh for R1, R3 and R4
Mr.K.V.Babu for R2



ORDER

The plaintiffs in a suit for partition and separate possession, aggrieved by the order of the Trial Court rejecting the revision petitioners' request, challenge the order of the Trial Court, refusing to direct defendants two and four to lead evidence first.

2. I have heard Mr.V.S.Kesavan, learned counsel for the revision petitioners, Mr.R.Ganesh learned counsel for respondents 1, 3 and 4 and Mr.KV.Babu learned counsel for the second respondent.

3. Mr.V.S.Kesavan, learned counsel for the revision petitioner taking me through the plaint and also the written statement of defendants 2 and 4, would contend that when the defendants 2 and 4 have claimed right to the properties under testamentary instruments, it is just and proper that they are called upon to enter the witness box first and lead evidence, since the validity of the Wills under which these defendants claim right, interest and title would eventually determine the right of the plaintiffs in the suit for partition. The learned counsel would therefore contend that the Trial Court ought not to have dismissed the application and should have directed the defendants two and four to lead evidence.



4. He would also take me through the counter affidavit filed to the present Application filed under Order XVIII Rule 1 CPC, where the contesting defendants have only objected on the ground of the application being taken out belatedly. In this regard, Mr.V.S.Kesavan, learned counsel for the revision petitioners would state that there has been no delay on the part of the revision petitioners. In view of the stand taken by the defendants in the written statement, the plaintiffs were necessitated to take out Applications to implead the 5th defendant and the issues were also framed only on 06.04.2024 and immediately thereafter, the Application had been taken out even before commencement of trial.

5. Per contra, Mr.R.Ganesh, learned counsel for the 1st, 3rd and 4th respondents who contend that in the plaint at paragraph No.7, the plaintiffs refer to item 2 of the suit property and also claims partition in respect of the said item. However, it is not the case of the revision petitioner that item 2 of the suit property is also covered under the testamentary instruments which are relied on by the defendants 2 and 4 and he would therefore state that when there are several other issues that arise for consideration and it is not limited to the claim of the defendants 2 and 4 under the testamentary instruments, the plaintiffs alone have to



get into the box. He would therefore contend that there is no infirmity in the order of the Trial Court dismissing the application.

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6. The learned counsel for the second respondent would invite my attention to paragraph 4 of the plaint where the plaintiffs claim that the properties are HUF properties. He would therefore state that even if the Will is proved or disproved, it may have a bearing only subject to the plaintiffs establishing that the suit property is a HUF property. He would therefore state that in such circumstances calling upon the defendants to enter the witness box first would not serve any purpose and it is for the plaintiff to enter the witness box and establish that the properties are first and foremost available for partition and it is not a case where the defendants 2 and 4 can be called upon to lead evidence first.

7. He would also place reliance on the decision of this Court in *K.Paneer Selvam vs Anandhakumar and ors*, reported in *MANU/TN/4772/2018*, where this Court referring to an earlier decision in *P.Lingasamy Vs. Premavathy*, reported in *2017 (1) CTC 305*, held that when the suit for partition is registered on several grounds and one of the grounds alone is in respect of Will, then the burden of proof being



different with regard to the several issues that arise for consideration, the defendants cannot be compelled to adduce evidence first.

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8. He would also rely on *Jami Venkata Suryaprabha and another vs Tarini Prasad Nayak and others*, reported in *2024 SCC Online SC 3862*, where the Hon'ble Supreme Court held that Order XVIII Rule 1, though provides for plaintiff's right to begin the evidence, it is not the Court's obligation to ask the plaintiffs to begin first and there is no impediment for the Court to call upon either party to lead evidence, depending upon the facts and circumstances of the case and nature of the issues framed. The Hon'ble Supreme Court further held that there can be no watertight compartmentalization in matters of justice and rules of procedure.

9. I have carefully considered the submissions advanced by the learned counsel on either side.

10. Even though it is contended by the petitioner/plaintiff that in respect of item 1 of the suit property, the defendants 2 and 4 have set up a defence claiming right under testamentary instruments, when it is the



case of the plaintiffs themselves that the properties are Hindu Undivided Family properties as can be seen in paragraph 4 of the plaint, where the plaintiff states that S.Kaveri Mudaliar and his two sons Late.Sivasubramaniam and K.Sivakumar originally constituted a Joint Hindu Family and again in paragraph 7, further stated that the property described as item 2 was purchased as a vacant site in the year 1964 and subsequently buildings were constructed out of joint exertion of the said Kaveri Mudaliar and his two sons, Sivasubramaniam and Sivakumar.

11. In view of the specific case on which the plaintiffs have approached the Court, I do not find any reasons to compel the defendants 2 & 4 to enter the witness box and lead evidence first, since their defence is not in respect of the entire suit items that there are Wills.

12. Admittedly, item 2 of the suit property is not covered under the Wills under which the defendants 2 and 4 claim a right. Further, as rightly contended by the learned counsel for the respondents, the plaintiffs have to first establish that the properties are Joint Hindu Family properties and that even the construction was out of joint exertion of wife and father respectively, the plaintiffs brother and their father, that is



Kaveri Mudaliar, Sivasubramaniam and Sivakumar.

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13. In view of the above, I do not find any infirmity or perversity in the findings arrived at by the Trial Court refusing to direct the defendants 2 and 4 to enter the witness box and lead evidence first before the plaintiffs. I do not find that the plaintiffs have made out a case that the defendants plea strikes at the root of the case and that therefore, the defendants would have to lead evidence first.

14. In view of the above, there is no merit. This Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. No costs.

29.08.2025

rkp
Index : Yes
Internet : Yes

To:
The I Additional Sub Judge,
Erode.



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P.B.BALAJI, J.,

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Pre-delivery order in
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