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CRP No.6399 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-12-2025

CORAM

THE HONOURABLE MR.JUSTICE S. SOUNTHAR

CRP No. 6399 of 2025

1. Jegajothi

W/o Thangavel, Navamaraththu Kadu,
Eduthuvainthagam Village and Post,
Kacheerapalayam Tk,
Krishnagiri District.

2. Jeganathan,

S/o. Muthu Gounder, No. 193/2,
Vadaku Kadu, Appasamudram Village,
Attur Taluk, Salem District.

Petitioner(s)

Vs

1. Kambooram,

W/o Late Periaswamy, Therkku Kadu,
Tanishka Green Apartment,
Narasingapuram Post,
Attur Taluk, Salem Dist.

Respondent(s)

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the Order dated 11.09.2025, granting leave to respondent to withdraw the suit in O.S No. 452 of 2023 with liberty to file a fresh Suit in I.A No. 4 of 2025 in OS NO. 452 of 2023, on the file of the Additional District Court, Attur, Salem.

For Petitioner(s): Mr. K.Shakespeare



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ORDER

This Civil Revision Petition is filed challenging the order passed by the Trial Court, allowing the application in I.A.No.4 of 2025 in O.S.No.452 of 2023, filed by the respondent/plaintiff, seeking leave of the court to withdraw the suit, with permission to institute a fresh suit by impleading all the heirs and properties in Namakkal District, which were not included in the instant suit.

2. The respondent herein/plaintiff filed the above said suit for partition against the petitioners/defendants, seeking 1/3 share in the suit properties. It was the case of the respondent that the parties are siblings and the first item of the suit property was purchased by her paternal grand father Nanjappa Gounder on 17.07.1956 and the second item of the suit property was purchased by him on 12.12.1956. After death of Nanjappa Gounder, the properties were inherited by his son and the father of the parties, Muthu Gounder. The said Muthu Gounder died on 22.03.2007 leaving behind the mother of the parties to the suit, namely Pappathi and one sister Danam. Subsequently, Danam died on 03.08.2020 without heirs and the mother of the parties, namely Pappathi also died on 29.11.2021. Thus, claiming that the suit properties are in joint possession of the plaintiff and the defendants, the respondent/plaintiff laid the above said suit for partition seeking 1/3 share.



3. Pending suit, the respondent/plaintiff filed the instant application seeking permission of the court to withdraw the suit with liberty to file a fresh suit for partition, by including the ancestral property situated in Namakkal District and also by impleading other legal heirs of the paternal uncle of the respondent. In the affidavit filed in support of the said petition, it was stated by the respondent/plaintiff that the daughters of the second petitioner herein and children of paternal uncle filed a partition suit in O.S.No.138 of 2020 on the file of Mahila Court, Namakkal, seeking partition of ancestral properties in Namakkal District and also the subject matter of the present suit properties. However, the respondent/plaintiff was not added in the said suit. It is further stated by the respondent that the said suit was compromised among the parties to the suit in O.S.No.138 of 2020. It was also stated by the respondent that an unregistered Will was also pressed into service in the said suit. Since a Lok Adalat Award was obtained in respect of ancestral properties in Namakkal District, including the present suit properties, without impleading the respondent/plaintiff, she wanted to withdraw the present suit with liberty to file a comprehensive suit for partition by including ancestral properties in Namakkal District and also by impleading the legal heirs of paternal uncle.

4. The learned counsel for the petitioners/defendants vehemently contended that the very status of the respondent as daughter of Muthu Goundar



has been seriously disputed and the information obtained by the petitioners under the Right to Information Act would create a doubt about the genuineness of the legal heirs certificate produced by the respondent/plaintiff. Therefore, the respondent/plaintiff is not entitled to get leave of the court to file a fresh suit, without establishing her relationship with Muthu Gounder.

5. It is not disputed that the second petitioner's daughter and the heir of paternal uncle of the parties filed a separate suit in O.S.No.138 of 2020 for partition in respect of the properties situated in Namakkal District and also the present suit property and obtained an award before the Lok Adalat, Namakkal, without impleading the respondent/ plaintiff. When it is stated that some of the ancestral properties of the family are situated in Namakkal District and those properties were not included in the present suit for partition and the children of paternal uncle were also not impleaded as parties in this suit, the same would amount to formal defect in the suit. Non joinder of sharers is also fatal to the partition suit. Likewise, non inclusion of all available properties would result in dismissal of the suit for partial partition. When there is a formal defect in the suit for partition filed by the respondent/plaintiff due to non joinder of some of the sharers and non inclusion of ancestral properties available for partition, nothing wrong in permitting the respondent/plaintiff to withdraw the instant suit with liberty to file a comprehensive suit in respect of the properties available for



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partition by impleading all the sharers. Therefore, I do not find any serious error in the impugned order passed by the Trial Court.

6. Accordingly, this civil revision petition is dismissed. There shall be no order as to costs.

16.12.2025

Internet: Yes
Index: yes/no
Neutral citation: Yes/No
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To

The Additional District Judge,
Attur, Salem.



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S. SOUNTHAR, J.

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