



CRP(MD). No.594 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 16/07/2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**CRP (MD). No.594 of 2022
and CMP(MD) No.2485 of 2022**

Ramasamy @ Rajaram

... Petitioner

Vs

- 1.Valliammal
- 2.Nirmala
- 3.Ponnusamy @ Prabhakaran
- 4.Muruganandham
- 5.Angamuthu (died)
- 6.Lingasamy
- 7.Meenakshi
- 8.Senthilkumar
- 9.Kalaiselvi
- 10.Minor Kavya
- 11.Minor Kousalya

... Respondents

(Respondents 8 to 11 were brought on record as LR's of the deceased 5th respondent vide order dated 27.06.2025 in CMP(MD) Nos. 13452 and 13453 of 2023)

PRAYER :- Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 15.02.2022 in IA No.52/2021 in OS No.215 / 2018 on the file of the Additional District and Sessions Judge, Palani.



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For Petitioner : Mr.D.Venkatesh
For Respondents : Mr.H.Lakshmi Shankar for R1&R2
Mr.D.Senthil for R9 to R11

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 15.02.2022 in IA No.52/2021 in OS No.215 / 2018 on the file of the Additional District and Sessions Judge, Palani.

2. The petitioner is the first defendant in the suit filed by the plaintiffs/respondents 1 and 2 in OS No.215/2018 and the said suit is filed for partition claiming $\frac{1}{2}$ share in the suit schedule property. Pending suit, the respondents 1 and 2/plaintiffs filed IA No.52/2021 under Order XXIII Rule 1(3) of the Code of Civil Procedure seeking to withdraw the suit with liberty to file a fresh suit for the same cause of action. The said petition came to be allowed. Challenging the said order, the petitioner is before this Court.

3. The learned counsel for the petitioner would submit that the application filed by the first and 2nd respondents are vexatious and



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frivolous in nature and in order to drag on the proceedings, such a petition came to be filed, which was allowed by the trial Court. In the said petition, the respondents 1 and 2 have taken a plea for withdrawal of the suit that the grandfather of the 2nd respondent had executed two Wills through the 1st defendant and allotted shares to the respondents 1 and 2/plaintiffs and 2nd and 3rd defendants and subsequently, 2nd respondent's grandfather died on 06.06.1989 and hence, in order to bring the Wills, the said petition came to be filed. However, the said petition was filed only after filing of the written statements. The learned counsel would submit that Ramasamy Gounder is none other than the brother of Kumaravel Gounder, who is the husband of the first respondent and the father of the 2nd respondent and originally the property belongs to one Periyasamy Gounder. The learned counsel would submit that even the Wills are executed in favour of the plaintiffs and defendants 1 and 2, there is no fresh cause of action arise as contended by the first and 2nd respondents and after four years of filing of the suit, the interlocutory application has been filed only to drag on the proceedings and the same is allowed, which needs interference.



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3. Per contra, the learned counsel for the respondents 1 and 2 would submit that Order XXIII Rule 1(3) of the Code of Civil Procedure makes it clear that where the Court is satisfied that a suit must fail by reason of some formal defect, or that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of a suit or part of a claim, the Court can grant permission to the plaintiff to withdraw the suit or part of the claim with liberty to institute a fresh suit in respect of the subject matter. The learned counsel would therefore contend that in the present case, the execution of the Will by the grandfather of the 2nd respondent came to their knowledge only after filing of the suit and written statements by the defendants and hence, the said application came to be filed to file fresh suit for the same cause of action and the trial Court has also allowed the said application on the ground that there are several grounds available for the plaintiffs to institute a fresh suit. Therefore, he prays for dismissal.

4. I have considered the rival submissions and perused the materials available on record.



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5. Considering the facts and circumstances of the case and considering the nature of the relief sought for by the respondents 1 and 2 in the interlocutory application under Order XXIII Rule 1(3) of the Code of Civil Procedure, without advertng to the merits or the contentions made by either side, this Civil Revision Petition is dismissed with liberty to petitioner as well as respondents to raise all the defence available to them in the subsequent suit to be instituted by the plaintiffs/respondents 1 and 2. No costs. Consequently connected Miscellaneous Petition is closed.

16.07.2025

NCC : Yes/No
Index : Yes/No
RR

TO

1.The Additional District and Sessions Judge, Palani.

2.VR Section

Madurai Bench of Madras High Court, Madurai.



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M.DHANDAPANI,J

RR

**ORDER
IN
CRP(MD) (NPD) No.594 of 2022**

Date : 16/07/2025