

C.R.P.(MD)No.1413 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.07.2025

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.R.P.(MD)No.1413 of 2025

and

C.M.P.(MD)No.7261 of 2025

P.Punithavathi

...Petitioner

Vs.

K.Palanisamy Konar (Died)

1.P.Kandavelu

2.P.Ketharnath

3.P.Shanmugam

4.P.Thirugnanasampantham

5.B.Thavamani

6.S.Balasundar

...Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, praying to call for the records and to set aside the fair and decreetal order passed in I.A.No.1 of 2023 in I.A.No.116 of 2019 in O.S.No.98 of 2011 dated 25.10.2024, pending on the file of Learned V Additional District Judge, Madurai.



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For Petitioners : Mr.C.M.Arumugam

For Respondents : Mr.R.S.Shanmugasundaram

Senior Counsel for Mr.M.Kannan for R1

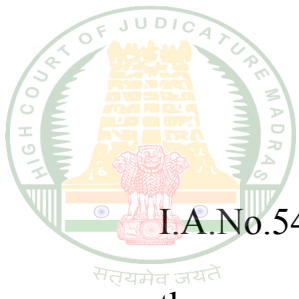
Mr.B.Vikram Veerasamy for R2

Mr.S.Chellapandian for R4

ORDER

This petition has been filed seeking to set aside the fair and decreetal order passed in I.A.No.1 of 2023 in I.A.No.116 of 2019 in O.S.No.98 of 2011 dated 25.10.2024, pending on the file of Learned V Additional District Judge, Madurai.

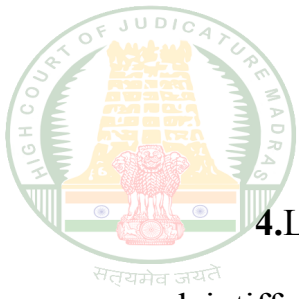
2.Learned Counsel for the petitioner would submit that the petitioner is the plaintiff in O.S.No.98 of 2011. She initially filed I.A.No.457 of 2017 to include Items 36 to 53 as 'A' schedule property. Subsequently, she withdrew the I.A. on 08.03.2019. Thereafter, the petitioner filed another I.A.No.116 of 2019 to include the items 1 to 170 properties as 'D' schedule property. During the pendency of the said I.A.No.116 of 2019, the petitioner realised that some properties were left out to be included and hence filed I.A.No.548 of 2021, to reopen I.A.No.116 of 2019. Meanwhile, the petitioner filed another application in I.A.No.1 of 2023, seeking to amend I.A.No.116 of 2019, withdrawing



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I.A.No.548 of 2021. Both the said I.As were dismissed. Challenging the same, the present Civil Revision Petition has been filed.

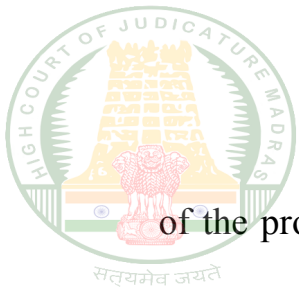
3.Learned Counsel for the petitioner would submit that the petitioner / plaintiff filed a suit for partition. The first defendant is the father of the petitioner / plaintiff and also father of defendants 2 to 5. The petitioner and the sixth defendant are born out of the wedlock of the first defendant with the first wife Ammathayammal. When the first marriage was subsisting, the first defendant married one Valliammal and due to the said wedlock, the defendants 2 to 5 were born. Thereafter, the first defendant purchased huge properties mentioned in 'A' schedule property out of the joint family properties and some properties were alienated during his life time and the first defendant also purchased several properties shown as 1 to 170 from the sale proceeds of the family property which was alienated by the first defendant and defendants 2 to 5. Thereby, the petitioner filed I.A.No.457 of 2017 for reopening and inclusion of Items 36 to 53 as 'A' schedule property. However, she realised that there are some more properties available to be included as 'D' schedule property. Thereby, she withdrew I.A.No.457 of 2017 on 08.03.2019 and filed the present I.A.Nos.116 of 2019 and I.A.No.548 of 2021.



4.Learned Counsel for the petitioner would submit that the petitioner / plaintiff specifically reserved her right in paragraph No.9 in the plaint averments to implead some other immovable and movable properties that come to her knowledge after filing of the suit. Further, the respondents / defendants filed additional written statement and the said statement was not denied by them. In the absence of any denial, the petitioner is entitled to amend the plaint under Order 6 Rule 17 of CPC. However, the amendment petition came to be dismissed, which is not sustainable.

5.Learned Counsel for the petitioner further submitted that the proposed amendment for inclusion of Items 1 to 170 as 'D' schedule property is purchased from the sale proceeds of the joint family property by the first defendant in the names of defendants 2 to 5. At the time of purchase, the defendants 2 to 5 were minors and they do not have signing capacity. Purchasing property in the name of the minors is also a joint family property, in which the petitioner is entitled to claim 1/6th share.

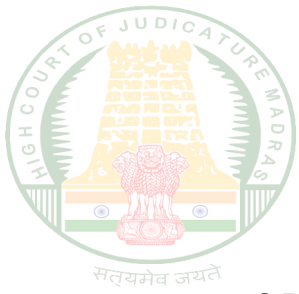
6.Learned Counsel for the petitioner would further submit that since some of the items of property is duplicated, which was already mentioned in A schedule property, thereby, the petitioner filed another I.A. for deletion of some



of the properties and for inclusion of the remaining properties as suit schedule property, enabling the petitioner to get 1/6th share. However, the same, in toto, declined by the trial Court is impermissible. The trial Court declined to entertain the amendment petition solely on the following grounds:

- 1) there was duplication of the suit schedule property.
- 2) the properties are re-produced which are mentioned in the A schedule property.
- 3) boundaries and property statements were not expressly stated in the application.
- 4) The person who purchased the property was also not added as party in the suit proceedings.

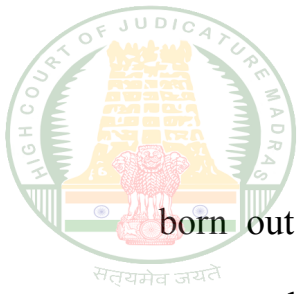
7.Learned Counsel for the petitioner would further submit that all those grounds are not sustainable and even if the amendment petition is allowed by wrong entries, that can be cured by way of another amendment petition. However, the right of the petitioner to claim the property cannot be denied by dismissing the impugned I.A. Accordingly, he prays for allowing this Civil Revision Petition. Further, the amendment does not change the cause of action of the suit. It is only a continuous cause of action and rejecting the petitioner's I.A. is not sustainable.



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8.Per contra, learned Senior Counsel for the respondents would submit that though the trial Court has not discussed anything with regard to the limitation issue for the proposed 'D' schedule property, the petitioner claims that the property in 'D' schedule was purchased from the year 1973 onwards. In the written statement, the first defendant has specifically averred that since there was no sufficient income from the landed properties of the first defendant, the first defendant had decided to start a business and the first defendant along with one Vilangaiah and Solaimudaliar started a grocery business as a partnership firm at Door No.13, Venkalakadai Street 1st lane, Madurai, in the year 1967 and from that business, he earned a lot and was able to run the family.

9.Learned Senior Counsel for the respondents would also submit that after the marriage of 6th defendant with Balakrishnan, the first defendant purchased the property in R.S.No.19/2 of Iravathanallur Village, Madurai, in the name of Balakrishnan out of love and affection towards him, out of the first defendant's own money in the year 1971. Apart from that, he also purchased agricultural land of 1 acre and 1 cent in the name of Balakrishnan and minor Sundaram. The sixth defendant is none other than the own sister of the plaintiff and plaintiff and the sixth defendant are the daughters of the first defendant



born out of the first wedlock. Hence, the claim of the petitioner that the proposed 'D' schedule properties were purchased only from the sale proceeds of the joint family properties and claiming a share over the same is inappropriate. Accordingly, he prays for dismissal of this Civil Revision Petition.

10. Heard the learned Counsel on either side and perused the materials available on record.

11. Admittedly, the first defendant has two daughters namely plaintiff and the sixth defendant. They are born out of the wedlock between the first defendant with his first wife Ammapillai. Thereafter, the first defendant realised that there was no chance for birth of male child and for the same, he performed another marriage with one Valliammal, out of which wedlock, the defendants 2 to 5 were born.

12. After performing sixth defendant's marriage with one Balakrishnan and settling several properties at the relevant point of time in their favour, the first defendant performed plaintiff's marriage in a grand manner by spending huge amount. Prior to 1977, all four sons were born out of the first defendant's marriage with the second wife. After the plaintiff's marriage, the first defendant

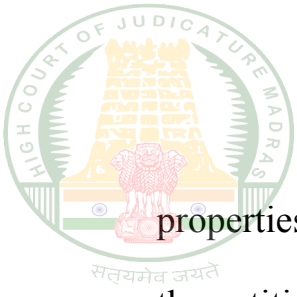


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paid Rs.1,07,000/- and purchased a house property in the name of the plaintiff's husband on 29.01.1998, including the brokerage charges and registration charges. In the year 2000, the petitioner / plaintiff had misunderstanding with her husband and left her matrimonial house. The first defendant has taken several efforts for reunion but the same was not fruitful. From then on, the first defendant had been helping the petitioner / plaintiff for meeting out her family expenses and educational expenses of her children.

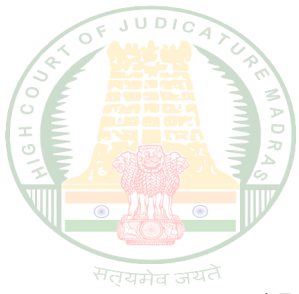
13.Thereafter, the first defendant's second wife Valliammal started a Finance Company in the year 1987 and had been earning a lot and she was also doing milk vending business. Out of her own earnings she purchased several properties in the name of the defendants 2 to 5.

14.Further, the petitioner / plaintiff had been doing money lending business and since she incurred heavy loss, in order to help her, the first defendant along with defendants 2 to 5 sold several items of properties. Even though the properties which fell to the first defendant's share through the partition deed dated 26.03.1973 as his separate properties, his sons namely defendants 2 to 5 joined in the execution of sale deeds at the compulsion of the purchasers. All those purchasers are in possession and enjoyment of the



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properties. Even that properties are excluded which are sold for the benefit of the petitioner / plaintiff. Initially, the petitioner / plaintiff included 'A' schedule property as Items 1 to 35 and apart from that 'B' schedule properties are immovable properties and 'C' schedule properties are partnership firm properties and the proposed 'D' schedule property has nothing to do with the present suit. It is also an admitted fact that certain properties mentioned in the 'A' schedule properties were also mentioned in the 'D' schedule properties and there is no clarity and to delete those properties, the petitioner / plaintiff has filed an application before the Court below, which itself shows that the petitioner has not approached this Court with clean hands. Apart from that, in the 'D' schedule properties there are no boundaries and the properties were not clearly established in terms of Order VII Rule 3 of CPC and the same is in violation of Order VII Rule 3 of CPC. Hence, with the aforesaid defects, no amendment petition can be allowed. Thereby, the trial Court elaborately considered the issues and rightly dismissed those applications. Further, it is found that during the pendency of this CRP, the suit itself was dismissed for default on 08.07.2025. Hence, this Court does not find any merit in this Civil Revision Petition.



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15.Accordingly, this Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Internet: Yes/No

Index: Yes/No

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To

1.The V Additional District Judge,
Madurai.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI, J.

MR

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