



C.R.P.(MD)No.1362 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.12.2025

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.R.P.(MD)No.1362 of 2024

and

C.M.P.(MD)No.7937 of 2024

1.Jinnah @ Nathar Hussain

Rasin @ Abdul Majid (Died)

2.Seit @ Beer Sheik

3.Fathima

4.Mubaraj Nisha

5.Benazir Thaslima

... Petitioners

-VS.-

1.Khan Mohammed

2.Raja Mohammed

3.A.R.Habeeb

...Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to call for the records relating with the Executable Order and Fair Order, dated 26.03.2024, made in I.A.No.03 of 2024 in O.S.No.45 of 2014 on the file of the Principal District and Sessions Court, Pudukottai and to set aside the same.



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For Petitioner :Mr.G.Prabhu Rajadurai
for Mr.J.Peer Mohammed
For Respondents :Mr.N.Balakrishnan

ORDER

The present Civil Revision Petition has been filed to set aside the order passed by the learned Principal District and Sessions Judge, Pudukottai, in I.A.No.3 of 2024 in O.S.No.45 of 2014, dated 26.03.2024.

2.Heard Mr.G.Prabhu Rajadurai, learned Counsel representing Mr.AJ.Peer Mohammed, learned Counsel for the Revision Petitioners and Mr.N.Balakrishnan, learned Counsel for the respondents.

3.The petitioners are the plaintiffs in the suit for partition in O.S.No.45 of 2014 on the file of the Principal District and Sessions Court, Pudukottai. The respondents are the defendants in the suit. During the pendency of the suit, the plaintiffs have filed an application in I.A.No.3 of 2024 under Order 23 Rule 1 CPC to withdraw the suit for partition and to file a fresh suit on the ground that the suit Item Nos.2 to 6 are the absolute properties of the first



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petitioner. The learned Principal District and Sessions Judge, Pudukottai, vide order, dated 26.03.2024, had dismissed the said application on the ground that there is no formal defect or no sufficient cause is made out. Challenging the same, the present Civil Revision Petition has been filed.

4.The learned Counsel for the Revision Petitioners submitted that in the suit schedule, the plaintiffs have mentioned 37 properties, in which Item No.2 is a property, which was purchased by the first plaintiff vide registered document; Item Nos.3 and 4 are the properties given by the Government for running a School, that cannot be partitioned; Item Nos.5 and 6 are the properties given to the first plaintiff as gift. Hence, the learned Counsel for the Revision Petitioners submitted that while instituting the partition suit, the petitioners/plaintiffs have included the above mentioned properties, which cannot be partitioned, as they self acquired and gifted properties. Hence, the petitioners/plaintiffs have filed the present application seeking permission to withdraw the suit with liberty to file a fresh suit for the same cause of action. The learned Counsel also submitted that though there is no formal defects in the plaint, there are sufficient grounds made in the application and the same



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cannot be cured by way of amendment and hence, the plaintiffs have to withdraw the suit for making proper pleadings in order to determine the real issues between the parties. The learned Counsel also submitted that even at the appellate stage, the Court can grant permission to withdraw the suit and in this case, only the trial has commenced and hence, no prejudice will be caused to the defendants in the suit. Hence, he seeks interference of this Court.

5.*Per contra*, the learned Counsel for the respondents contended that the petitioners/plaintiffs have not pleaded anything with regard to Item Nos.2 to 6 and has now filed an application to withdraw the suit with liberty to file a fresh suit for the same cause action. The learned Counsel appearing for the respondents/ defendants submitted that all the defences are available for the petitioners/plaintiffs to advance their arguments with regard to Item Nos.2 to 6, whether, they are self acquired properties in the name of the first petitioner/first plaintiff or joint family properties. Further, the learned Counsel for the respondents submitted that Item Nos.2 to 6 are properties purchased out of the income derived from the joint family properties and that the petitioners cannot claim that they are self acquired properties. The learned Counsel for



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the respondents also submitted that the Court below has rightly passed the impugned order, which needs no interference of this Court.

6.This Court considered the submissions made on either side and perused the materials available on record.

7.It is not in dispute that the plaintiffs/petitioners have shown 37 properties for the purpose of partition and when the plaintiffs have come to know that certain properties, which have been subjected for partition are not amenable for partition, since it is pleaded that Item No.2 is a property purchased by the first petitioner and Item Nos.3 and 4 are the properties given by the Government for running a School and Item Nos.5 and 6 are the properties gifted to the first petitioner. Hence, this Court is of the view that withdrawal of the suit and filing of the fresh suit will not cause any prejudice to the respondents. Further, in view of Mohamedian law, N number of partition suits can be filed, if the properties are left over. Hence, in the interest of justice, this Court is inclined to pass the following order:



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7.1)The Civil Revision Petition is is allowed and the order passed by the learned Principal District and Sessions Judge, Pudukottai, in I.A.No.3 of 2024 in O.S.No.45 of 2014, dated 26.03.2024, is set aside. No costs. Consequently, connected miscellaneous petition is closed.

08.12.2025

Internet :Yes/No
NCC :Yes/No
Index :Yes/No

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To

The Principal District and Sessions Judge, Pudukottai.



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N.SENTHILKUMAR, J.

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