



C.R.P(NPD)(MD)No.1906 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.01.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(NPD)(MD)No.1906 of 2024
and C.M.P(MD)No.10796 of 2024

1.S.Rengarajan

2.R.Andal

3.PerumalChandran

4.Angusamy

5.Kasthuri

... Petitioners

Vs

1.Vijaya Rajeshwari

2.A.Andal

3.Uma Bharathi

... Respondents

Prayer : This Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the dismissal order passed in I.A.No.1 of 2022 in O.S.No.115 of 2021 dated 28.03.2024 on the file of Sub Court, Nanguneri and to reject the plaint by way of allowing this Civil Revision Petition.

For petitioners : M/s.K.Abiya

For Respondents : Mr.T.Selvan for
Mr.V.Boominathan for R1 to R3



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ORDER

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This Civil Revision Petition is filed to set aside the dismissal order passed in I.A.No.1 of 2022 in O.S.No.115 of 2021 dated 28.03.2024 on the file of Sub Court, Nanguneri and to reject the plaint by way of allowing this Civil Revision Petition.

2. The facts in brief:

Suit in O.S.No.115 of 2021 was filed by the respondents herein seeking the relief of permanent injunction in respect of item No.1 and alternative prayer of the partition and separate possession of their 1/3rd share and in respect of the second item, seeking the relief declaration that they are the joint owners of the property and for consequential permanent injunction and similar alternative prayer for partition of their 1/3rd share. Revision petitioners are the defendants 2 to 6. They entered appearance and filed I.A.No.1 of 2022 to reject the plaint, on the ground that even as per the plaint pleadings, the legal heirs of deceased Shanmuga Sundara Perumal were not impleaded and another ground mentioned in the petition is that in respect of item Nos.1 and 2, the first defendant filed a suit in O.S.No.252 of 2022 before the II Additional Sub Court



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Tirunelveli and the said suit was dismissed in respect of item Nos.1 and

2. Similarly, another suit in O.S.No.18 of 2016 was filed by the first defendant before the Sub Court, Valliyoor. It was dismissed and later the first defendant filed a suit in O.S.No.191 of 2020 before the I Additional District Court, Tirunelveli and the same is pending. Suppressing all these facts, the present suit is filed. In O.S.No.191 of 2010, which is pending on the file of I Additional District Court, Tirunelveli, counter claim for 1/3rd is filed. Apart from that as mentioned above, suit is bad for non-joinder of necessary parties.

3. That petition was resisted by the plaintiff by filing counter. The trial Court, after hearing both sides, dismissed the petition, finding that it is a matter for trial and apart from that it was also held that necessary parties can be impleaded at any point of time and for that purpose, plaint cannot be rejected. In respect of the plea of *res judicata* that can be decided only at the time of trial and not at the initial stage. Against which, this revision is preferred.



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4. Heard both sides.

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5. Regarding the first issue of non joinder of necessary parties viz., legal heirs of deceased Shanmuga Sundara Perumal, it is always open to the plaintiff to file impleading petition at the appropriate time. It is for the trial Court to decide whether the suit is bad for non joinder of necessary parties. Therefore, the said plea is not available to the revision petition at this stage and correctly held so by the trial Court.

6. Regarding the *res judicata* plea, it requires a through trial process. Whether the suit is an attempt on the part of the plaintiff to re-litigate the issue already decided can also taken up by the trial Court at the appropriate stage. But *res judicata* plea cannot be taken at this stage. The trial Court has rendered a finding that suit in O.S.No.18 of 2016 was decided without answering the issues. Moreover, it was dismissed as not pressed. As observed by the trial Court, the *res judicata* plea can be taken only on the basis of the evidence. Therefore, in view of the settled position of law, I find that this plea also not to be taken at this stage. Therefore, the trial Court dismissed the petition on valid grounds. Hence, I find no reason to interfere with the order.



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7. Accordingly, this Civil Revision Petition is dismissed.

Consequently, connected miscellaneous petition is closed. No costs.

27.01.2025

NCC :Yes/No

Index :Yes/No

Internet : Yes/ No

vsm

To

1.The Sub Court, Nanguneri

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



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G.ILANGO VAN, J.

vsm

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