



C.M.P(MD)No.9550 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.09.2025

Pronounced on : 25.10.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.P(MD)No.9550 of 2025

in

A.S(MD)No.168 of 2017

Vellaisamy (Civil Death)

1.Akkammal
2.Murugan
3.Kandasamy

...Petitioners/Proposed
Respondents 1 to 3

Vs.

Kavitha

... Respondent/Appellant

PRAYER : Civil Miscellaneous Petition is filed under Order 1 Rule 10 of C.P.C., to implead the petitioners 1 to 3 as the respondents 2 to 4 in A.S(MD)No.168 of 2017.

For Petitioners : Mr.M.Sasi

For Respondent : Mr.G.Gomathi Sankar



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ORDER

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This Civil Miscellaneous Petition is filed by the petitioners to implead them as respondents 2 to 4 in A.S(MD) No.168 of 2017.

2. The petitioners have stated reasons in the accompanying affidavit filed along with the Civil Miscellaneous Petition are follows:

The petitioners are brothers of the deceased Vellaisamy and they are the sons of one Vellaithai @ Vellaithayammal. The respondent/appellant got married the said Vellaisamy. The petitioners' mother Vellaithai @ Vellaithayammal had 6 acres and 50 ½ cents in her name and she obtained loan from one Muthupandi for agricultural development by giving the deed of property as guarantee. She had written the property in the name of her son, Vellaisamy and her daughter-in-law, respondent herein, on 10.11.2005 in nominal terms, along with said Muthupandi. Neither Vellaisamy nor his wife, the respondent herein, settled the loan. But, the respondent started changed activities, separated from her husband and filed HMOP.No.58 of 2009 on the file of the Principal Sub Court, Dindigul against her husband for divorce. She also filed O.S.No.19 of 2009 on the file of the Additional District and Sessions Court (FTC), Dindigul, against her husband, Vellaisamy, for



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partition, claiming 1/2 share. The said suit was dismissed on 11.01.2012.

Challenging the dismissal of the suit, the respondent/appellant has filed this present appeal. There was a police complaint against the petitioners' brother, deceased Vellaisamy, who came out on condition bail. In such situation, the deceased Vellaisamy had gone in a two wheeler on 08.07.2011 and was missing. A case in Crime No.275 of 2011 was registered by Ambathurai Police Station as man missing. The mother also filed H.C.P.(MD)No.594 of 2011 before this Court to find out her son Vellaisamy, in which order was passed on 05.11.2011. The said Vellaisamy was not found out for about 8 years from 2011 to 2019 and his mother, Vellaithai @ Vellaithayammal, filed O.S.No.117 of 2019 before the District Munsif-cum-Judicial Magistrate Court, Athoor, to declare the missing Vellaisamy as civil death and the same was decreed on 03.09.2020. At this time, the respondent/appellant filed a suit in O.S.No.97 of 2021 as if she is the legal heir of her husband, Vellaisamy and also challenging the decree in O.S.No.117 of 2019. The petitioners' mother died on 13.02.2022. The petitioners' mother executed a Will on 21.09.2021 and as per the said Will, her movable & jewel properties and also the properties in question, should go to the 3rd petitioner. The respondent/appellant suppressed all these facts and filed this appeal in A.S.(MD)No.168 of 2017 against her husband who was declared as civil



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death. The petitioners as the Class.II Legal heirs of their brother Vellaisamy and they are having reasonable and good counter in the appeal. So, the petitioners may be impleaded as respondents in this appeal.

3. The respondent filed a counter and objected the petition and stated as follows:

The averments of the petitioners in the affidavit are all denied as false. The respondent was given married with the petitioners' brother Vellaisamy on 08.06.2005. At the time of marriage, 30 sovereign of gold jewels and household articles were given and 2 sovereigns of gold chain & $\frac{3}{4}$ sovereign ring were also given to Vellaisamy. The respondent's parents purchased the suit property in her name and her husband from Muthupandi and her mother-in-law through registered sale deed, dated 10.11.2005, in which the petitioners are attestors. After purchase, the respondent and her husband borrowed agriculture loan from SBI, Ambathurai by pledging her $14 \frac{1}{2}$ sovereign gold jewels. Thereafter, due to misunderstanding, the respondent filed a divorce petition in HMOP.No.58 of 2009 on the file of the Principal Sub Court, Dindigul. An exparte decree was passed in that petition and the same was set aside by her husband, later, that petition was 'dismissed for default'. Both the respondent and her husband conducted life without any



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dispute, while so her husband went by two wheeler on 08.07.2011, but did not return back. So, the respondent informed the same to her mother-in-law and filed case in Crime No.275 of 2011 before the Ambathurai Police Station, Dindigul and also her mother-in-law filed H.C.P(MD)No.594 of 2011 before this Court. The respondent's mother-in-law approached the bank to get jewels, which were refused, so her mother-in-law filed O.S.No.117 of 2019 on the file of the District Munsif-cum-Judicial Magistrate Court, Authur, to declare the civil death of Vellaisamy and on obtaining ex-parte decree, she got back the jewels from the bank. The respondent is not a party to that suit. After knowing the same, the respondent filed O.S.No.97 of 2021 on the file of the District Munsif-cum-Judicial Magistrate, Authur, to declare herself and her mother-in-law as the legal heirs of her husband Vellaisamy against the decree in O.S.No.117 of 2019. As there was a dispute in the suit property, the respondent filed O.S.No.19 of 2009 for the relief of partition before the Fast Track Court, Dindigul and the same was dismissed, she preferred the appeal in A.S.(MD)No.168 of 2017 before this Court. Subsequently, her mother-in-law also passed away. So, the respondent is the only legal heir of her husband and the respondent is entitled to get the entire suit property. The petitioners are brothers and sisters of the respondent's husband Vellaisamy and they knew very well about the aforesaid facts and



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also they are the attestors on the sale deed. Now, the petitioners are claiming property through unregistered Will. In fact, the respondent's mother-in-law had no right to execute any such Will after sold out the same to the respondent by way of registered sale deed. The respondent is the Class I legal heir of her husband. The petitioners are not having any right over the property. So, the petition is liable to be dismissed.

4. The learned counsel for the petitioners has submitted that the petitioners are siblings of one Vellaisamy, who married the respondent/appellant. Due to misunderstanding between the said Vellaisamy and the respondent/appellant, she filed the divorce petition and obtained divorce order. The said Vellaisamy found missing from 08.07.2011, so he was declared as civil dead as per decree passed in O.S.No.97 of 2021, thereafter, the mother of Vellaisamy namely Vellaithai @ Vellathayammal filed a suit in O.S.No.177 of 2019 for declaring the mother as legal heir of Vellaisamy, that suit was decreed, while so the mother was a legal heir of civil deceased Vellaisamy. Suppressing these facts, the respondent/appellant filed the suit in O.S.No.19 of 2009 against her husband seeking partition of $\frac{1}{2}$ share by claiming that the mother sold the property to them. Her husband, namely Vellaisamy, who is the defendant in O.S.No.19 of 2009, filed the



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written statement stating that the respondent/appellant relinquished her right over the property by getting amount from him. The trial Court has also concluded that the sale deed, dated 10.11.2005 is not valid document and so, the suit was dismissed. Thereafter, narrating all these facts, the mother, Vellaithayammal, executed Will in favour of the 3rd petitioner. The respondent/appellant claimed share through the said sale deed. The respondent/appellant preferred the first appeal against a deceased person. Against a deceased person the appeal could not be heard. The suit property originally belonged to the mother of Vellaisamy. Now, the said Vellaisamy and his mother are no more. The petitioners are class II legal heirs, so without hearing the petitioners, the case could not be adjudicated, so the petitioners are proper and necessary parties. Therefore, the petitioners may be impleaded as parties.

5. Per contra, the learned counsel for the respondent has mainly contended that though the respondent/appellant filed the divorce petition, the same was 'dismissed for default' and the respondent and her husband lived together. At the time of marriage, the respondent/appellant's parents purchased the suit property in her name and her husband's name for valuable sale consideration from Vellaithai @ Vellathayammal and Muthupandi.



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The petitioners signed as attestors in the said sale deed. The petitioners also gave evidence that the suit property is absolute property of their mother, who is non other than the mother-in-law of the respondent/appellant. As of now, the husband and mother-in-law of the respondent/appellant are died, so the respondent/appellant is the absolute owner of the suit property. The petitioners knew very well about these facts, only in order to harass the respondent/appellant, the petitioners created a forged, unregistered Will in favour of the 3rd petitioner. The petitioners are attestors to the earlier sale deed, so they cannot claim right over the property and therefore, the petition may be dismissed.

6. Heard both sides and perused the records. On hearing both sides, it is clear that the petitioners are siblings of one Vellaisamy, who was the husband of the respondent/appellant. There is no dispute that the husband of the respondent/appellant, namely Vellaisamy declared as civil dead due to long absence. The suit property originally belonged to the mother of Vellaisamy, namely Vellaithai @ Vellathayammal. The respondent/appellant's case is that the property was purchased in her name and her husband's name, in which the petitioners are attestors. However, she claimed a half share in the suit property by filing a suit in O.S.No.19 of 2009 against her husband



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and the same was dismissed. Aggrieved by the dismissal of the suit, the respondent/appellant has preferred the first appeal before this Court against her civilly dead husband and the same is pending. Now, since the husband and mother-in-law of the respondent/appellant are died, the petitioners, who are siblings of the civil deceased Vellaisamy, are coming under class II legal heirs. It is the specific case of the petitioners that the mother of deceased Vellaisamy, namely Vellaithai @ Vellathayammal, has executed a Will in favour of the 3rd petitioner narrating all these above facts.

7. At this stage, the petitioners have filed this petition to implead them as respondents 2 to 4 in the main appeal. The petitioners averred in the affidavit that the suit property is absolute property of their mother, Vellaithai @ Vellathayammal, who executed a Will in favour of the 3rd petitioner. The respondent/appellant denied that the alleged Will was unregistered one. Both parties made rival claims by arguing at length. In this petition, it is to be decided that whether the petitioners can be impleaded as parties in this appeal or not. The other arguments relating to other aspects will be decided in the main appeal.



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WEB COPY 8. It is admitted that the petitioners are brothers and sister of civil deceased Vellaisamy, who is shown as the sole respondent in the appeal. The relationship of petitioners with the civil deceased Vellaisamy is not disputed by the respondent/appellant. The respondent/appellant also filed the original suit for partition, claiming $\frac{1}{2}$ share in the suit property by virtue of the sale deed, dated 10.11.2005. It is not disputed that the trial Court held that Ex.P.1 - sale deed dated 10.11.2005 stood in the name of the respondent/appellant and her husband was not proved by the respondent/appellant in the suit. The respondent/appellant has not raised strong objection against the petitioners as they are not siblings of deceased Vellaisamy. Merely impleading the petitioners in the appeal, there will be no prejudice to the respondent/appellant, as there would not change in the cause of action of the suit. Each and every party shall be given an opportunity to substantiate their case. Considering the above facts and circumstances, the petitioners can be added as a parties to this appeal since the interest of the petitioners in the property in question is claimed through their mother. Therefore, this Court is inclined to allow this petition.



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9. In the result, this Civil Miscellaneous Petition is allowed and the petitioners are ordered to be impleaded as respondents 2 to 4 in this appeal.

25.10.2025

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



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P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
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in
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