



C.R.P(MD)No.1748 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.02.2025**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.1748 of 2022

and

C.M.P(MD)No.7676 of 2022

G.Suburam

... Petitioner/Petitioner/
11th Defendant

Vs.

1.K.Visalakshi

2.Meenakshi

... Respondents/Respondents/
Plaintiffs

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in I.A.No.358 of 2021 in O.S.No.90 of 2013, dated 11.04.2022 on the file of the learned II Additional Subordinate Judge, Madurai.

For Petitioner : Mr.C.S.Ravichandran

For Respondents : Mr.R.Manoharan



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ORDER

The present revision petition has been filed by the 11th defendant in O.S.No.90 of 2013 on the file of II Additional Subordinate Judge, Madurai challenging the dismissal of his application filed under Order VII Rule 11 of Code of Civil Procedure.

2. The respondents herein have filed the above said suit for the relief of partition and separate possession of their share in the suit schedule properties. The 11th defendant in the suit has filed a written statement taking a plea that some unnecessary parties have been impleaded and therefore, the suit has to be dismissed for mis-joinder of necessary parties. There is no pleading in the written statement that necessary parties have not been impleaded and therefore, the suit is bad for non-joinder of parties.

3. The 11th defendant in the suit had filed I.A.No.358 of 2021 under Order VII Rule 11 of C.P.C to reject the plaint on the following grounds:



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(a) Mis-joinder of necessary parties, namely defendants 5, 6 and

10.

(b) Non-joinder of one Nagalakshmi who is a necessary party.

(c) Suppression of material facts.

4. The trial Court found that the 11th defendant has not chosen to file the legal heir certificate to find out who are all the legal heirs of the deceased Gurusamy. The trial Court has further found that it is not necessary to reject the plaint on the sole ground of mis-joinder or non-joinder of parties since it has to be decided on the basis of the evidence adduced by both the parties. Challenging the same, the present revision petition has been filed.

5. According to the learned counsel appearing for the revision petitioner, since unnecessary parties have been arrayed and necessary party has not been arrayed, the plaint is liable to be rejected.



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6. However, the learned counsel appearing for the respondents had contended that there is no pleading in the written statement relating to non-joinder of necessary party and she prayed for sustaining the order passed by the trial Court.

7. I have carefully considered the submissions made on either side and perused the material records.

8. A perusal of Order I Rule 9 reveals that a suit cannot be dismissed on the ground of mis-joinder of necessary parties. As per Order I Rule 13, unless and until the issue relating to mis-joinder or non-joinder of parties is raised before the settlement of issues, the same cannot be considered and it should be deemed to have been waived. In the present case, admittedly the defendant has not raised the plea of non-joinder of necessary party in his written statement filed on 02.03.2021. Whether there was any suppression of material facts on the part of the plaintiff or not has to be decided only during trial. In these



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circumstances, this Court is of the considered opinion that there are no merits in the revision petition.

9. Hence, this Civil Revision Petition stands dismissed. No costs.

Consequently, connected Civil Miscellaneous Petition is closed.

03.02.2025

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

- 1.The II Additional Subordinate Judge,
Madurai.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Order made in
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