



C.R.P.(PD)(MD) No. 2803 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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|               |            |
|---------------|------------|
| Reserved on   | 06.01.2025 |
| Pronounced on | 02.04.2025 |

CORAM

**THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

**C.R.P.(MD) No. 2803 of 2023**

E.Malathi (died)

1.V.Easwaran

2.E.Mageshwaran

3.Mr.E.Sathees Kumar

... Revision petitioners / Plaintiffs

Vs.

Gandhimathiammal (died)

1. Latha

2. C.Raja

3. C.Venkateswwari

C.Pounmani(died)

4. C.Suganya

5. C.Sangeetha

6. C.Vijayaraj

7. M.Ramesh

8. K.Bothumani

9. A.Arulmozhi

10.J.Karthika

11.C.Malarvizhi

12.K.Kayalvizhi

13.S.Rathinam

14.V.S.Sandeep

15.K.Sevika

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Otchammal(died)  
C.Chinnathai (died)

16.K.Kavitha  
17.M.Prabavathi  
18.Minor M.Lathika  
19.Minor M.Hariharan  
20.P.Karthikeyan  
21.A.Latha  
22.S. Jeyakodi  
23.S.Sivaramakrishnan  
24.Chitra  
25.Lakshmipriya  
26.Lakshmipriya  
27.D.Umadevi

... Respondents

(Cause title is accepted vide Court, order  
dated 06.10.2023 made in CMP(MD).No.13001 of 2023  
in CRP(MD).No.SR.56286 of 2023)

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order in I.A.No.437 of 2017 in I.A.No.234 of 2015 in O.S.No.216 of 2013 on the file of the Sub-Court, Uthamapalayam, Theni District.

For Petitioner : Mr. Veerakathiravan  
Senior Counsel  
for Mr.S. Ramsundar Vijayaraj

For Respondents  
6 and 14 : Mr. P. Thiyagarajan  
For respondents  
16 to 19, 22 to 28 : Mr. M.Mahendran

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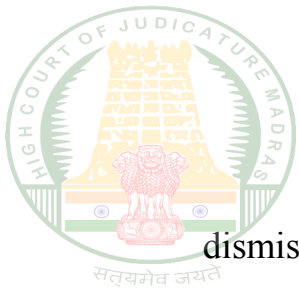
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## **ORDER**

This Civil Revision Petition has been filed against the fair and decreetal order, dated 07.01.2021 made in I.A.No.01 of 2021 in O.S.No. 354 of 2021 on the file of the Sub-Court, Uthamapalayam, Theni District.

2. According to the writ petitioners, one Chinnathai filed a suit for partition in O.S.No.71/1985 seeking 1/7<sup>th</sup> share in the suit properties which was decreed on 24.04.1992 against which, one S.V.Swaminathan preferred an appeal suit before the Principal District Court, Madurai, in A.S.No.57/1993. In the meantime, the 4<sup>th</sup> and 5<sup>th</sup> respondent in the appeal suit filed two interlocutory applications in I.A.Nos.341/1995 and 370/1995 for marking of two partition deeds dated 20.08.73, stating that the entire property stood in the name of S.V.Chinnamayan and S.V.Swaminathan respectively. In the above appeal suit, the 2<sup>nd</sup> respondent Chinnathai filed a Cross Appeal and the same was numbered as I.A.No.210 of 1995. While so, the mother of the petitioners and the respondents namely Sivanammal died on 11.12.1993. The appeal suit and the interlocutory applications in I.A.Nos.341/95 and 370/95 were also



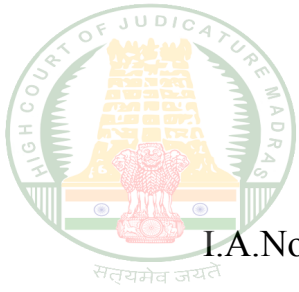
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dismissed. However, the cross appeal in I.A.No.210/95 was allowed and

1/6<sup>th</sup> share was allotted to all the family members.

3. Thereafter, the said S.V.Swaminathan preferred the second appeal in S.A.No.1773/1996 before the Principal Seat and it was transferred to Madurai Bench. In the meantime, the 6<sup>th</sup> respondent namely M.Saraswathy died on 23.10.2002. Saraswathy executed a Will in favour of the 1<sup>st</sup> petitioner's wife namely Malathy and therefore, she was impleaded as the 22<sup>nd</sup> respondent in the second appeal.

4. While so, the 4<sup>th</sup> respondent S.V.Swaminathan filed a civil revision petition against the marking of the Will executed by Saraswathy in C.R.P.No.2247/2011. Pending revision, the said Swaminathan died on 26.09.2012. Thereafter, the second appeal and the revision petition were dismissed on 11.02.2013 as abated, thereby confirming the 1/6<sup>th</sup> share to the parties. Thereafter, the said Malathy filed a petition in I.A.No. 572/2014 in O.S.No.216/2013 for passing of final decree. During pendency of the final decree petition, the said Malathy died on 01.12.2015 and her legal heirs were impleaded and they filed an application in



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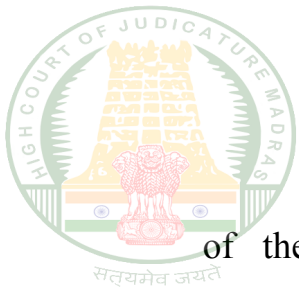
I.A.No.152/2014 before Sub Court, Theni under Order 47 Rule 14(3) of

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CPC to produce the Will dated 30.10.1995 executed by the 3<sup>rd</sup> defendant

Chinnasamy in favour of Malathy as additional document and the same was allowed on terms by order dated 09.03.2016. The said Will was marked as Ex.P.1 in I.A.No.572 of 2014. However, the learned Sub Judge, Theni, allotted only 1/6<sup>th</sup> share to the 1<sup>st</sup> petitioner's wife Malathy. The claim over Chinnasamy's 1/6<sup>th</sup> share was negated by the learned Sub Judge, Theni by his order dated 17.10.2016 made in I.A.No.572/2014 in O.S.No.216/2013. In the meantime, the said final decree proceedings was transferred to Sub Court, Uthamapalayam and renumbered as I.A.No. 234/2017. The petitioners filed another petition in I.A.No.437/2017 in I.A.No.234/2017 to recognize the petitioners as the legatees of late Chinnasamy on the basis of his Will dated 30.10.1995 in favour of Malathy. The said petition was dismissed by the learned Sub Judge, Uthamapalayam, against which the present revision is preferred.

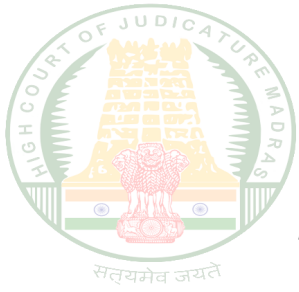
5.The learned counsel appearing for the revision petitioners submits that the trial Court failed to consider Ex.P.1 'Will' executed by Chinnasamy in favour of Malathy and the evidence on record in support



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of the Will and has passed the impugned order which requires  
consideration by this Court.

6. On the other hand, the learned counsel for the respondents Nos. 6 and 14 submits that the petitioners' claim over the 1/6<sup>th</sup> share of Chinnasamy was negated by the learned Sub Judge, Theni, by his order dated 17.10.2016 made in I.A.No.572/2014 in O.S.No.216/2013 against which no appeal or revision has been preferred. Therefore, the order dated 17.10.2016 became final. Hence, the learned Sub Judge, Uthamapalayam proceeded with the final decree petition and allowed the said petition on 07.01.2023 allotting 1/6<sup>th</sup> share alone to the petitioners. Therefore, the subsequent petition to recognize the petitioners as legatees of the Will dated 30.10.1995 of Chinnasamy is legally not maintainable and the same is barred by the principles of *Res-Judicata*. The learned counsel further submits that the principles of *Res-Judicata* not only apply to the subsequent suit but also apply to the subsequent stages in the same proceedings/suit and in support of the said contention he has relied upon the following judgment of the Hon'ble Apex Court reported in **AIR 2022 SC 5317**.



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7.His further contention is that, the petitioners claiming 1/6<sup>th</sup> share of the 3<sup>rd</sup> defendant Chinnasamy based on the Will dated 30.10.1995 failed to prove the Will as required under Section 68 of the Indian Evidence Act and as per Section 63 of the Indian Succession Act. Though, the attestors were examined as in P.W.3 & P.W.4 in the earlier proceedings in I.A.No.572/2014 in O.S.No.216/2013, their depositions cannot be marked in evidence in the final decree proceedings in view of the specific bar under Section 33 of the Indian Evidence Act which contemplates that evidence of the living persons in earlier proceedings cannot be marked in subsequent proceedings. Therefore, the petitioners miserably failed to prove the Will in accordance with law. Therefore, the present revision petition is devoid of merits and liable to be dismissed.

8. Heard on both sides and records perused.

9.It is not in dispute that the 1<sup>st</sup> petitioner's wife Malathy filed an application in I.A.No.572/2014 in O.S.No.216 of 2013 on the file of Sub Court, Theni, for passing of final decree claiming 1/6<sup>th</sup> share of late Chinnasamy on the basis of the Will (Ex.P.1) dated 30.10.1995 said to



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have been executed by S.V.Chinnasamy in favour of Malathy.

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10.The learned Sub Judge, Theni, by his order dated 17.10.2016 negated the petitioners' claim over Chinnasamy's 1/6<sup>th</sup> share. Since no appeal or revision was preferred against the said order, the same has become final. As rightly pointed out by the learned counsel for the respondents, the principles of Res-Judicata not only applies to the subsequent suit but also applies to the subsequent stages in the same proceedings/suit as laid down by the Hon'ble Apex Court in **AIR 2022 SC5317**. Moreover, a statement of a living person, except under the circumstances mentioned in Section 33 of the Indian Evidence Act, cannot be marked as a document in the subsequent suit or **[Ref: 2009 6 MLJ 841]**. Therefore, no illegality or perversity found in the order of the learned Sub Judge, Uthamapalayam passed in I.A.No.437/2017 in I.A.No. 234/2015 in O.S.No.216/2013 dated 09.08.2019 which warrants interference by this Court.

11.In the result, the Civil Revision Petition stands dismissed. No costs.



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02.04.2025

Index: Yes/ No  
Neutral Citation: Yes / No  
Speaking Order/Non-Speaking Order

trp/vsn

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**K.GOVINDARAJAN THILAKAVADI, J.**

trp/vsn

Pre-Delivery Order made in  
**C.R.P.(MD) No. 2803 of 2023**

02.04.2025