



C.R.P.(MD)No. 2064 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.06.2025

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.R.P.(MD)No.2064 of 2021

and

C.M.P.(MD)No.11016 of 2021

R.V.Kamaraj

...Petitioner

Vs.

1.A.Meena
2.P.Indhurani

...Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, praying to pass an order setting aside the Fair and Decreetal order dated 09.09.2021 passed in I.A. No.4 of 2020 in O.S.No.6 of 2012 by Additional District Court, Theni.

For Petitioner : Mr.Anand Chandrasekar,
for M/s.Sarvabhauman Associates
For Respondents : Mr.B.Pandiaraj



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ORDER

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This petition has been filed seeking to set aside the order dated 09.09.2021 passed in I.A. No.4 of 2020 in O.S.No.6 of 2012 by the Additional District Court, Theni.

2.Learned Counsel for the petitioner would submit that the petitioner is the plaintiff in O.S.No.6 of 2012. Originally, the petitioner / plaintiff filed a suit for partition as against the defendants 1 to 9. Thereafter, the very same petitioner filed I.A.No.15 of 2013 under Order 6 Rule 17 r/w. Section 151 of CPC, to permit the petitioner / plaintiff to amend the plaint schedule property by adding Items 21 and 22 as suit schedule property. The said I.A. was allowed on 23.04.2015. The said I.A. was challenged neither by the original defendants nor by the respondents who were arrayed as respondents 10 & 11. Subsequently, the very same respondents along with one Prabhakaran, filed impleading petition to implead themselves as party in I.A.No.102 of 2015 under Order 1 Rule 10(2) of CPC r/w. Section 151 of CPC and the same was allowed on 09.10.2017 and they were added as defendants 10 to 12 in the suit. Thereafter, the very same respondents herein filed the present impugned I.A.No.4 of 2020 in O.S.No.6 of 2012, under Order 6 Rule 16 (a) (b) & (c) of CPC r/w. Section 151 of CPC, to strike out the 22nd schedule of the property and delete their names from the array

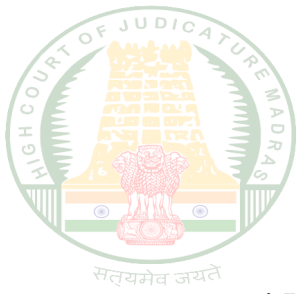


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of defendants in the plaint. The said I.A. came to be allowed on 09.09.2021.

Challenging the same, the present Civil Revision Petition has been filed.

3.Learned Counsel for the petitioner would submit that admittedly, the petitioner / plaintiff filed I.A.No.15 of 2013, before the Lower Court to amend the schedule by including items 21 and 22, by marking four documents. After contest by the original defendants, the said I.A. was allowed on 23.04.2015. The same was not challenged either by the respondents herein by way of third party Civil Revision Petition before this Court or by the original defendants. Thereafter, the respondents themselves filed an impleading petition under Order 1 Rule 10 (2) of CPC r/w. Section 151 of CPC in I.A.No.102 of 2013 and the same was allowed on 09.10.2017, by impleading themselves as defendants 10 to 12 and thereafter, the present I.A. is filed under Order 6 Rule 16 (a) (b) & (c) of CPC r/w. Section 151 of CPC, to delete Item No.22 of the suit schedule property and for deleting themselves in the plaint, which is an impermissible one. The trial Court, without jurisdiction entertained the said I.A. and allowed the same, which is not maintainable. Once earlier order is passed, that cannot be recalled by the trial Court. It can be questioned by way of review alone. Hence, learned Counsel for the petitioner prays for allowing this Civil Revision Petition.



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4.Learned Counsel for the respondents would submit that the respondents who are the defendants 10 & 11 in the suit are unnecessary parties in the plaint and the property in Item No.22 is a private property belonging to the 10th and 11th defendants and the said property is their ancestral property, which is the subject matter of the partition suit. Hence, the respondents filed Order VI Rule 16 petition before the trial Court and the same was rightly entertained by the trial Court, which need not be interfered with. Accordingly, learned Counsel for the respondents prays for dismissal of the present Civil Revision Petition.

5.The issue that has arisen in this Civil Revision Petition is whether the earlier proceedings which was allowed by the trial Court can be struck off by way of Order 6 Rule 16 petition. The facts in the present case are not in dispute. Admittedly, the petitioner filed an interlocutory application in I.A.No.15 of 2013, under Order 6 Rule 17 r/w. Section 151 of CPC, to permit the petitioner / plaintiff to amend the plaint schedule property by adding Items 21 and 22 as suit schedule property. After contest, the same was allowed by the trial Court, vide order dated 23.04.2015. After inclusion of the said property, the first and second respondents claim to be the owner of the property. They themselves got impleaded as party defendants in the proceedings by filing I.A.No.102 of 2013



under Order 1 Rule 10 (2) r/w. Section 151 of CPC and the same was allowed in their favour on 09.10.2017. In this background, again the very same defendants filed a petition in I.A.No.4 of 2020 in O.S.No.6 of 2012, under Order 6 Rule 16 (a) (b) & (c) of CPC r/w. Section 151 of CPC, to strike out the 22nd schedule of the property and delete their names from the array of defendants in the plaint.

6.Order 6 Rules 16 of CPC reads as follows:

“16. Striking out pleadings – Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading –

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of Court.”

7.Order 6 Rule 16 deals with striking out pleadings. However, the very same Court included the two items of property by allowing I.A.No.15 of 2013, after contest. In I.A.No.102 of 2013, the same Court arrived at a conclusion that the present respondents are proper and necessary party in the suit and allowed the said I.A. However, this Court is unable to understand on what reasons by



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invoking the power available under Order 6 Rule 16, ordered for striking the 22nd schedule of the suit schedule property and for deleting the names of the respondents herein. Such an approach of the trial Court is an impermissible one and the trial Court has no power to recall its own order. The power of the trial Court is only in terms of Section 114 and Order 47 Rule 1 of CPC, for reviewing the order. Except this review power, no other powers vest with the trial Court. Hence, the order of the trial Court is liable to be set aside and the same is set aside. However, this Court has not expressed any opinion on the merits of the case. Also, the petitioner is directed to raise all the issues before the trial Court and the trial Court is directed to decide and dispose of the suit without being influenced by any of the observations made by this Court in this Civil Revision Petition.

8. Accordingly, this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

25.06.2025

Internet: Yes/No

Index: Yes/No

MR

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To

1. The Additional District Court,
Theni.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI, J.

MR

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