



C.R.P(MD)No.2992 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2025

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.2992 of 2024
and
C.M.P(MD)No.17123 of 2024

Ramasamy Gounder @ Rajaram ... Petitioner/1st Defendant

Vs.

1.Valliyammal

2.Nirmala ... Respondents/Plaintiffs 1&2

3.Ponnusamy @ Prabhakaran

4.Muruganantham

5.Lingasamy

6.Meenakshi

N.Angamuthu (Died) ... Respondents/Defendants 2-6

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the docket order, dated 28-10-2024 passed in the memo filed by the petitioner in O.S.No.131 of 2022 on the file of the Additional District Court, Palani.

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For Petitioner : Mr.D.Venkatesh

For R1 & R2 : Mr.K.Elangovan

For R3 - R6 : No Appearance

ORDER

The 1st defendant in O.S.No.131 of 2022 on the file of Additional District Court, Palani is the revision petitioner herein.

2. The respondents 1 and 2 herein as plaintiffs have filed the above said suit for the relief of partition and separate possession. Pending suit, the 6th defendant has passed away. A memo has been filed by the learned counsel appearing for the 6th defendant that his client has passed away on 24.04.2023. Thereafter, the 1st defendant has filed a memo to the effect that the legal heirs of the 6th defendant are necessary parties and they have to be impleaded in the suit for partition. However, so far the plaintiff has not taken any steps to implead the legal heirs of the 6th defendant.



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3. On the other hand, the plaintiffs have filed an application under Order XXII Rule 4(4) of Code of Civil Procedure seeking exemption from the Court from impleading the legal heirs of the deceased 6th defendant. However, the said application was withdrawn by the plaintiffs. The trial Court has made an endorsement on 28.10.2024 to the effect that the legal heirs of 6th defendant need not be impleaded since no relief is asked for in the plaint as against 4th defendant to 6th defendant. Aggrieved over the said order, the present revision petition has been filed.

4. According to the learned counsel appearing for the revision petitioner, the plaint prayer is against all the defendants and therefore, the observation of the Court granting exemption from impleading the legal heirs of the 6th defendant is not legally sustainable. He further contended that once a suit is dismissed as abated as against one of the co-sharers, the suit get dismissed as against all other co-sharers in view of the judgment of the Hon'ble Supreme Court reported in *AIR 1973 SC 204 (Babu Sukhram Singh V. Ram Dular Singh & Others)*.



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5. This Court has perused the prayer in the plaint and found that the prayer in the plaint has been sought for as against all the defendants.

If the plaintiffs do not want to implead the legal heirs of the 6th defendant, they are taking the risk. The suit as against the 6th defendant has got abated. In case, if the trial Court ultimately arrives at a finding that the plaintiffs are entitled to a decree for partition, the Court has to consider, whether the 6th defendant is a necessary party to the suit for partition or not. Therefore, this Court is not inclined to interfere in the order of the trial Court.

6. With the said observations, this Civil Revision Petition stands disposed of. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

17.02.2025

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

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- 1.The Additional District Court,
Palani.
- 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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