



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-03-2026

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

**CRP No. 169 of 2022
and CMP No. 920 of 2022**

ANB Nagarajan (died)

- 1.Jayalakshmi Ammal
- 2.N.Balaji
- 3.Umamaheswari
- 4.Madurambika

..Petitioner(s)

Vs

Govindarasan (died)

- 1.Duraiganesan
- 2.Sureshbabu
- 3.Venkatesan
- 4.Mahesh

Alamelu Ammal (died)

- 5.Vairam
- 6.Muthammal
- 7.Thangam
- 8.Dhanam

..Respondent(s)

Prayer : This petition to set aside the Para Nos. 6 to 8 of the fair and decretal order dated 19.01.2021 made in I.A. No. 56 of 2020 in O.S. No. 351 of 2004 on the file of the Learned Principal District Munsif Court, Kallakurichi by allowing this Civil Revision Petition.

For Petitioner(s): Mr.N.Manoharan

For Respondent(s): No appearance



ORDER

This Civil Revision Petition has been filed to set aside Para Nos. 6 to 8 of the fair and decretal order dated 19.01.2021 made in I.A. No. 56 of 2020 in O.S. No. 351 of 2004 on the file of the Learned Principal District Munsif Court, Kallakurichi by allowing this Civil Revision Petition.

2. Despite notice being served and names printed in the cause-list, when the matter was taken for hearing on 04.03.2026 and today's date(11.03.2026), there is no representation on the side of the respondents. Hence, they set exparte.

3. The learned counsel for the petitioner would submit that a suit was instituted by the petitioner's father for declaration of title with consequential permanent injunction, in which after the death of the petitioner's father, they were all impleaded as plaintiffs in the suit. He would submit that the suit property was originally owned by the first defendant, who had for himself and on behalf of his sons, had sold the property to one Chinnapillai Ammal under a registered sale deed from whom the father of the petitioner had purchased the same.



4. While that being so, the respondent 5 to 8 had instituted the suit for partition against the said Govindarajan and others for partition and separate possession, in which a preliminary decree had also been passed. He would submit that the property was sold by the said Govindarajan, on behalf of himself and respondents 1 to 4, in which respondents 5 to 8 were also attestors. He would submit that the said decree of partition itself is null and void with an intention to defeat the rights of the petitioners. Even though the respondents 1 to 4 were originally set exparte, they had taken out an application under Order XXII Rule 10A of the Code of Civil Procedure to recognize them as legal heirs of respondents 5 to 8 on the ground that the grandmother, who had been given a share in the partition, had executed a Will in their favour, and that the other respondents, who had benefitted under the partition, had also executed a sale deed in favour of their mother and therefore, they would have a right and interest in respect of the property, that was allotted in favour of their grandmother.

5. He would submit that at any event, by application of Section 43 of the Transfer of Property Act, 1882 would entitle the petitioners to seek for declaration as prayed in the suit even assuming that such partition decree was a valid decree. In such circumstances, the petitioners have taken out an application seeking to amend the plaint to include the pleadings with regard to



the same, particularly, the provisions of Section 43 of the Transfer of Property Act, 1882.

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6. He would submit that the Court below, without considering the provision of Section 43 in a cryptic order has rejected the same by holding that the petitioner(s) is attempting to create a new case rather than the one that had been pleaded in the plaint. He would submit that originally, the suit had been filed seeking for a declaration to declare the title and even in the said plaint, specific pleadings had been made with regard to the earlier partition suit filed *inter se* between the respondents to be a collusive suit and the same to be not binding. He would submit that only on filing of an application under Order XXII Rule 10A by respondents 1 to 4 to declare them as legal representatives of the other respondents based upon the Will and the sale deeds executed by them. the petitioners were aware of the fact and hence, by application of Section 43 of the Transfer of Property Act, the petitioners could also raise an alternative plea of perfecting title even assuming that the sale deed executed by the father of the respondents 1 to 4 even on their behalf could be held to be invalid in extent of the partition decree. As now the beneficiaries of the partition decree had transferred their right and interest in favour of the respondents 1 to 4, there would be no impediment in applying the provisions of Section 43 of the Transfer of Property Act for perfecting the title to the petitioners and there is no



new case as held by the Court below that is sought to be canvassed by the petitioners. Hence, he seeks indulgence of this Court in the order impugned in this revision.

7. Considered the submissions made by the learned counsel appearing on either side and also gone through the materials placed on record.

8. Initially, the suit had been filed seeking for a declaratory relief and for a consequential injunction on the strength of a sale deed by which the deceased plaintiff had purchased the property. The respondents 1 to 4 have chosen not to appear and were set *exparte* by the orders of the Court.

9. A perusal of the plaint would also indicate that there is a pleading with regard to the partition suit that have been filed *inter se* the defendants, in which a decree of partition was granted *exparte*. The respondents 1 to 4 on the strength of the Will that had been executed by their grandmother, who was the defendants in the suit and the sale deed executed by the other defendants in their favour on the strength of the partition decree given in their benefit had made taken out application under order XXII Rule 10A of the Code of Civil Procedure to be legal representatives of such defendants. This contention of theirs in seeking to be the legal representatives under Order XXII Rule 10A



would only draw this Court to the conclusion that their attempt to thwart the case of the plaintiff in the suit is that the sale deed under which their father had executed a sale deed for himself and on behalf of the respondents 1 to 4 utmost could only be restricted to their share in their property and cannot be extended to the share of the beneficiaries of the partition decree.

10. In this context, it would be useful to refer Section 43 of the Transfer of Property Act, 1882, which is extracted hereunder :-

“43. Transfer by unauthorised person who subsequently acquires interest in property transferred.—

Where a person fraudulently or erroneously represents that he is authorised to transfer certain immoveable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists. Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.”

The aforesaid provision envisages a right of the transferee in a property by a person, who did not have a title on the date of the said transfer but acquires title to the said property subsequently to his benefit.



11. On the admitted facts based upon the pleadings of the respondents 1 to 4 in their application under Order XXII Rule 10A it could be seen that the petitioners who are transferees of the property could always seek recourse to the provision of Section 43 of the Transfer of Property Act. They would not amount to introducing a new set of facts particularly in the present facts of the case as the petitioner had already pleaded in plaint the averments with regard to the partition suit.

12. For the aforesaid reasons, this Court is of the view that in the impugned order, the claim of the petitioner has been erroneously rejected on wrong consideration of facts and hence, requires indulgence by this Court.

13. In fine, this Civil Revision Petition stands allowed and the order dated 19.01.2021 made in I.A. No. 56 of 2020 in O.S. No. 351 of 2004 on the file of the Learned Principal District Munsif Court, Kallakurichi and as sequel I.A. No. 56 of 2020 in O.S. No. 351 of 2004 is ordered as prayed for. Consequently, connected Miscellaneous Petition is closed. No order as to costs.

14. Necessary amendments shall be carried out by the petitioners within a period of two(2) weeks from the date of receipt of a copy of this Order.



15. Considering the fact that the suit had been instituted in the year 2004, there shall be a direction of the learned Judge, Principal District Munsif Court, Kallakurichi to dispose of the suit within a period of six(6) months from the date of carrying out the amendment in the plaint.

11-03-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

Maya

To

The Judge,
Principal District Munsif Court,
Kallakurichi.



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CRP No. 169 of 2



K.KUMARESH BABU, J.

Maya

CRP No. 169 of 2022

Dated : 11-03-2026