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C.R.P. No.3527 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 16 / 12 / 2025

ORDER PRONOUNCED ON : 24 / 02 / 2026

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

Civil Revision Petition No.3527 of 2023

and

Civil Miscellaneous Petition No.22075 of 2023

Mrs. Dhanalakshmi
W/o. Sri Rajendran
North Street, Sedunthankuppam Village,
Hamlet of Kattugudalur,
Panruti Taluk, Cuddalore District.

... Petitioner / 4th respondent /
4th defendant

Versus

1. Mrs. Jagaratchagi,
W/o. Sanjeevi Gandhi
Visur Village & Post,
Panruti Taluk.

... 1st Respondent / Petitioner /
Plaintiff

2. Sukkuru,
S/o. Manickam

3. Sugavasi Pappa Ammal,
W/o. Sri Sukkuru

4. Siva Prakasam,
S/o. Sri Sukkuru

... Respondents 2 to 4 /
Respondents 1 to 3 /
Defendants 1 to 3



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5. Mayakrishnan,
S/o. Sri Sukkuru

6. Jagadeesan,
S/o. Sri Sukkuru

... Respondents 5 & 6 /
Respondents 5 & 6 /
Defendants 5 & 6

Defendant Nos. 2 to 6 are residing at
Ambathkar Street,
Marungur Village & Post,
Panruti Taluk, Cuddalore District.

7. Palani,
S/o. Narayanan
Kezhakuppam Village,
Hamlet of Vallam,
Panruti Taluk,
Cuddalore District.

... 7th Respondent /
7th Respondent/
7th Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the
Constitution of India, 1950 praying to set aside the fair and decreetal Order
dated July 11, 2023 passed in I.A. No.197 of 2022 in O.S. No.169 of 2008
on the file of the learned District Munsif, Panruti.

For Petitioner	:	Mr. T.S. Baskaran
For Respondent 1	:	Ms. Vijayalakshmi K. Rajaratnam Legal Aid Counsel
For Respondent 2 to 6	:	Served – No appearance
For Respondent 7	:	Refused



ORDER

This Civil Revision Petition is filed under Article 227 of the Constitution of India, 1950, praying to set aside the Fair and Decretal Order dated July 11, 2023 passed by 'the District Munsif Court, Panruti' ['Trial Court' for convenience] in the Interlocutory Application in I.A. No.197 of 2022 filed under Order XXIII Rule 1 read with Section 151 of 'the Code of Civil Procedure, 1908' ['CPC' for short] in O.S. No.169 of 2008, thereby permitting the petitioner therein to withdraw the Suit in O.S. No.169 of 2008 with liberty to file a fresh Suit with the same cause of action.

2. The Revision Petitioner and the Respondents 2 to 7 herein are the defendants and the First respondent herein is the plaintiff in O.S. No.169 of 2008 on the file of the Trial Court. For the sake of convenience, the parties will henceforth be referred as per their array in the Original Suit.

3. Sum and substance of the plaintiff's case is as follows :

- (i) The defendants 1 and 2 are the husband and wife. The plaintiff and the defendants 3, 5, and 6 are the daughter and sons of the defendants 1 and 2 respectively.



(ii) An extent of 1 Acre and another extent of 60 Cents, both in Survey No.97/1, both having their own specific four boundaries, are the Suit Item Nos.1 and 2 respectively. The suit properties were assigned to defendants 1 and 2 on April 30, 1994 by the Government for the benefit of the joint family members. Defendants 1 and 2 were in possession and enjoyment of the suit properties on behalf of joint family members. As per the terms and conditions of the assignment, the assignees are not entitled to alienate the suit properties until the completion of 10 years from the date of assignment.

(iii) While the plaintiff being a joint family member is entitled to 1/6th share in the suit property, the defendants 1 to 3, 5 and 6 colluded together and alienated the suit property in favour of the defendants 4 and 7. The plaintiff contends that the alienation would not bind her share. Hence she filed the Suit in O.S. No.169 of 2008 before the Trial Court seeking partition of her respective share in the suit properties by setting aside the Sale deeds dated February 10, 2006 and January 30, 2006 executed in favour of the defendants 4 and 7.



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4. That being the case of the plaintiff, the defendants 4 and 7 who are purchasers the portions of suit properties, filed the written statement jointly under Order VIII Rule 1 of CPC, stating that it is not correct to allege that the suit properties were originally owned by Government and that they were assigned in favour of the defendants 1 and 2. An extent of 77 ½ Cents in Suit survey number was purchased by first defendant *vide* Sale Deed dated August 24, 1984. The remaining extent in the Suit survey number was ancestral and joint family entitlement of first defendant. Totally the joint family of first defendant owned 1 Acre 60 Cents in Suit survey number, which was in possession of first defendant and his other coparceners namely defendants 3, 5 and 6. Defendants 1 to 3, 5 and 6 executed Sale Deed dated July 02, 2003 in respect of Suit Item No.1 in favour of one Chitra, who in turn executed Sale Deed dated February 10, 2006 in favour of 4th defendant. Further, the defendants 1 and 2 executed the Sale Deed dated April 28, 2004 in favour of one Babu in respect of Suit Item No.2. Subsequently, the said Mr.Babu executed Sale Deed dated January 30, 2006 in favour of the 7th defendant. Furthermore, on the date of the aforesaid Sale Deeds, the plaintiff was not a coparcener and was not entitled to any share. The plaintiff is not entitled to the benefit under Tamil Nadu Act No.1 of 1990 or that under the Hindu Succession (Amendment)



Act, 2005 (Act No.39 of 2005). Thus, the defendants 4 and 7 are *bona fide* purchasers of Suit Item Nos.1 and 2. Revenue records have been mutated in the name of defendants 4 and 7. Hence, the plaintiff cannot seek the relief for cancellation of the Sale Deeds dated February 10, 2006 and January 30, 2006.

5. When the case was posted for trial, the plaintiff filed an application under Order XXIII Rule 1 read with Section 151 of CPC before the Trial Court seeking to withdraw the Suit in O.S. No.169 of 2008 with a liberty to file a fresh Suit, stating that some formal mistakes have crept in the prayer of the plaint and further that, some persons needed to be impleaded. It was stated that if amendment is carried out, rank of parties would get change causing confusion.

6. The Trial Court accepted the reasons stated by the plaintiff in the affidavit filed in support of the petition and allowed the Interlocutory Application in I.A. No.197 of 2022 thereby granted leave to file a fresh Suit to the plaintiff on the same subject matter.

7. Feeling aggrieved by the aforesaid Order, the 4th defendant has filed the present Civil Revision petition praying to set aside the same.



8. Mr. T.S. Baskaran, learned Counsel appearing for the revision petitioner / 4th defendant would submit that the Suit was filed in the year 2008 and has been pending for more than 17 years without any progress. Further, he would submit that if the plaintiff feels that the prayer in the plaint has to be amended, the plaintiff can very well file an amendment petition. If some parties are to be impleaded in the plaint, they can be added under Order I Rule 10(2) Of CPC during the pendency of the Suit. Further, he would bring the attention of this Court to Section 21 of Limitation Act, 1963 and would argue that during the pendency of the Suit, when the defendants are added or substituted into an existing suit, the proceeding, as far as that newly impleaded party is concerned, is considered to have been instituted on the date they were actually made a party and not on the date the Original Suit was filed and they can validly raise all the defenses including that the claim against them is barred by limitation. He would further submit that the 4th defendant purchased the 1st item of the suit property from one Chitra by way of Sale Deed dated February 10, 2006. The said Chitra purchased Suit Item No.1 from the defendants 1 to 3, 5 and 6. The present suit has been collusively filed by the plaintiff at the instigation of the defendants 1 to 3, 5 and 6 with the intention to deprive the rights of the defendants 4 and 7 over the suit



property who are the *bona fide* purchasers. However, the Trial Court without appreciating the said aspects, erred in allowing the petition to withdraw the Suit granting liberty to file a fresh Suit on the same cause of action. Hence, he would seek to allow this Civil Revision Petition and to set aside the Order dated July 11, 2023 passed by the Trial Court.

9. *Per contra*, Ms. Vijaya Lakshmi K. Rajaratnam, learned Legal Aid Counsel appearing for the 1st respondent / plaintiff would submit that while instituting the Suit, some typographical errors crept in the prayer portion of the plaint and the same has to be rectified. Further, some more parties have to be added as necessary parties and that the rank of parties will get altered in the said process which will lead to confusions. Hence, the plaintiff wanted to institute an altogether fresh Suit on the same cause of action. In these circumstances, the Trial Court rightly granted leave to withdraw the present Suit and file a fresh Suit on the same cause of action. Hence, there is no warrant to interfere with the Order of the Trial Court. Accordingly, she would pray to dismiss the Civil Revision Petition and sustain the Order passed by the Trial Court.

10. This Court has considered both sides' arguments and perused the entire set of documents annexed along with the Civil Revision Petition.



11. The defendants 4 and 7 in their written statement have specifically have averred that a portion of suit properties were purchased by 1st defendant and the remaining were his ancestral and joint family properties. The plaintiff has not clearly averred with regard to the title of the suit property in the plaint. She has pleaded that the suit properties were all assigned by the Government for the benefit of first defendant and his family members and she seeks 1/6 share in the suit properties.

12. In a Suit for partition, a defendant is also like plaintiff, in the sense that, the defendant can also seek their share and establish their right over the suit property. In this case, even as per the case of defendants 4 and 7, a portion of suit properties is ancestral and joint family properties. The question whether the plaintiff is entitled to the benefit of Tamil Nadu Act No.1 of 1990 or Central Act No.39 of 2005, or whether the Sale Deed executed by first defendant and other coparceners would bind the plaintiff, whether the Sale Deeds are executed for the benefit of the joint family including the plaintiff, are all questions to be decided in the Suit.

13. As per the Order XXIII Rule 1 of CPC, the plaintiff being the *dominant litus*, can at any time, withdraw the Suit or abandon a part of her claim against any defendant. The Court has the discretionary power under



Order XXIII Rule 1 (3) to grant leave to withdraw with liberty to institute a fresh Suit if satisfied of formal defects or sufficient grounds. In this case, if the plaintiff wants to bring about changes in the plaint prayer, she can very well do the same by filing an amendment petition. If she wants to implead more parties, she can very well implead them during the pendency of the Suit by filing an Interlocutory Application under Order 1 Rule 10 (2) of CPC. Rank of existing parties would not get changed in doing so. It is highly improbable that these amendments would make the plaint incomprehensible. Hence, the reasons assigned by the plaintiff are not satisfactory and the Trial Court is not right in granting leave to withdraw the Suit and file a fresh Suit based on the same cause of action. More so, when the Trial Court is empowered only to grant liberty to file a fresh Suit on the same subject matter and not on the same cause of action. Hence, the Order of the Trial Court is not in consonance with Order XXIII Rule 1 of CPC. It is liable to be interfered with.

14. If the plaintiff files amendment or impleading petition(s), the same shall be considered in accordance with law by the Trial Court.

15. In the result, this Civil Revision Petition is allowed and the Order dated July 11, 2023 passed by the Trial Court in I.A. No.197 of 2022



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is set aside. The Trial Court shall restore the Suit on the file and shall proceed with Suit as per law. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

24 / 02 / 2026

Index : Yes
Speaking order : Yes
Neutral Citation : Yes
lbm/TK

To

The District Munsif
Panruti.



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R.SAKTHIVEL, J.

lbm/TK

Pre-delivery order made in
Civil Revision Petition No.3527 of 2023

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