



C.R.P. NO.23 OF 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 05 / 12 / 2025

ORDER PRONOUNCED ON : 05 / 03 / 2026

CORAM:

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

CRP NO.23 OF 2023

AND

CMP NO.198 OF 2023

1.Devaraj

S/o.Veerappa Gounder
Nadukkuppam Village,
Marakkanam Taluk.

2.Shankar

S/o.Devaraj
Nadukkuppam Village,
Marakkanam Taluk.

... Petitioners /
Petitioners /
Plaintiffs

Versus

1.Natarajan

S/o.Veerappa Gounder
Nadukkuppam Village,
Present Marakkanam Taluk,
(Prior Tindivanam Taluk)



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2.Mari Gounder
S/o.Veerappa Gounder
Nadukkuppam Village,
Present Marakkanam Taluk,
(Prior Tindivanam Taluk)

3.Thaaayar
W/o.Krishnan
Nadukkuppam Village,
Present Marakkanam Taluk,
(Prior Tindivanam Taluk)

4.Murugan
S/o. Krishnan
Nadukkuppam Village,
Present Marakkanam Taluk,
(Prior Tindivanam Taluk)

5.Ganesan
S/o. Krishnan
Nadukkuppam Village,
Present Marakkanam Taluk,
(Prior Tindivanam Taluk)

6.Kumaravelu
S/o. Natarajan
Nadukkuppam Village,
Present Marakkanam Taluk,
(Prior Tindivanam Taluk)

7.Sakthivelu
S/o. Natarajan
Nadukkuppam Village,
Present Marakkanam Taluk,
(Prior Tindivanam Taluk)



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8.Kumaresan

S/o. Mari

Nadukkuppam Village,
Present Marakkanam Taluk,
(Prior Tindivanam Taluk)

9.Vasantha

W/o. Dharuma Gounder

Nadukkuppam Village,
Present Marakkanam Taluk,
(Prior Tindivanam Taluk)

10.Devanan

(Power Agent of Mari)

S/o.Dhasaradhan

Soonambedu Village,
Kancheepuram District.

11.Roopa Lakshmi Narayanan

W/o. Padmanaban

Power Agents

No.5/205, Sri Nilaya,
VGP Golden Beach Lay Out,
Enchambakkam, Chennai – 41.

12.Sadhasivam

S/o. Subramani

No.5/205, Sri Nilaya,
VGP Golden Beach Lay Out,
Enchambakkam, Chennai – 41.

13.Chitra

W/o.Sadhasivam

No.5/205, Sri Nilaya,
VGP Golden Beach Lay Out,
Enchambakkam, Chennai – 41.



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14.Valli
W/o. Elumalai
Kesavanayakkan Palayam,
Marakkanam Taluk.

15.Uma
W/o. Mari
Nadukkuppam Village,
Marakkanam Taluk.

16.Nirmala
W/o. Elumalai
Nadukkuppam Village,
Marakkanam Taluk.

... Respondents /
Respondents /
Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, 1950 praying to set aside the Order and Decretal Order of dismissal dated August 16, 2022 passed in I.A.No.225 of 2018 in O.S.No.172 of 2016 by the Additional Subordinate Court, Tindivanam.

For Petitioners : Ms.R.Saritha

For Respondents : Mr.Mohanraj
2, 8 & 15 for Mr.D.Senthilkumar

For Respondents
1, 3 to 7, 9, 10, 11, 12,
13 and 16 : Not ready in notice

For Respondent – 14 : Refused



ORDER

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This Civil Revision Petition is filed under Article 227 of the Constitution of India, 1950 praying to set aside the Fair and Decretal Order of dismissal dated August 16, 2022 passed in a petition under Order VI Rule 17 of 'the Code of Civil Procedure, 1908' ['CPC' for short] in I.A. No.225 of 2018 of O.S. No.172 of 2016 on the file of 'the Additional Subordinate Court, Tindivanam' ['Trial Court' for short].

2. The Revision Petitioners herein are the plaintiffs in the Original Suit. The Respondents herein are the Defendants therein. The parties shall hereinafter be referred to as per their rankings in the Suit.

3. The first plaintiff is the father and the second plaintiff is his son. The defendants 1 and 2 are brothers of first plaintiff and defendants 3 to 5 are legal heirs of Late. Krishnan who is another brother of first plaintiff. Defendants 6 and 7 are sons of first defendant. Eight defendant is the second defendant's son. Fifteenth defendant is second defendant's wife. According to the defendants, the plaintiffs, defendants 1 and 2, and late Krishnan have four sisters namely Pattalam, Dhanam, Savithri and Rani.

4. Case of the plaintiffs is that the Suit 'A' schedule property are joint properties in which the first plaintiff is entitled to $\frac{1}{4}$ share. Further case is



that the Suit 'B' schedule properties were purchased jointly by first plaintiff and second defendant and hence, the first plaintiff is entitled to $\frac{1}{2}$ share in it. When the first plaintiff was suffering from mental illness, the Partition Deed dated June 19, 2008 followed by Rectification Deed dated October 24, 2008 were executed by undue influence causing prejudice to the plaintiffs' share in the suit properties. Hence the plaintiffs filed the present Suit for declaration that the aforesaid Partition Deed and Rectification Deed are invalid, for partition and other reliefs.

5. The plaintiff *inter-alia* in Paragraph No.6 of the plaint averred that Item No.8 of Suit 'A' schedule properties is a house site with building measuring 12 Cents within specific four boundaries, was orally divided between first plaintiff, defendants 1 and 2, and their brother - late Krishnan; 2 Cents were left for pathway and the remaining 10 Cents were equally divided among the four. The western $2\frac{1}{2}$ Cents was allotted to the first plaintiff, the next $2\frac{1}{2}$ Cents was allotted to first defendant, next $2\frac{1}{2}$ Cents was allotted to Late Krishnan and the next $2\frac{1}{2}$ Cents was allotted to second defendant. Separate Pattas were also sought to be obtained. Subsequently, with a view to defeat and defraud the plaintiffs' rights, fabricated documents as if he is entitled to 3 Cents and also as if his wife, the fifteenth defendant purchased 2 Cents in the said item and filed a Suit



in O.S. No.15 of 2011 on the file of the District Munsif Court, Tindivanam and obtained a Judgment and Decree in his favour. Further, defendants 2 and 15 (husband and wife) fraudulently executed a Sale Deed in favour of sixteenth defendant. The first plaintiff executed a Gift Settlement Deed dated December 30, 2010 in favour of second plaintiff based on the oral partition *qua* Item No.8 of Suit 'A' schedule properties. But as the defendants failed to act in accordance with the oral partition, the said Gift Settlement Deed could not be brought into force. Hence, Item No.8 of Suit 'A' schedule properties needs to be partitioned by way of this Suit and that is why the second plaintiff has been added as a party. These are the averments contained in Paragraph No.6 *qua* Item No.8 of Suit 'A' schedule properties.

6. The second defendant filed written statement and the defendants 1, 6 to 8 and 15 adopted the same. It was *inter-alia* contended that the plaint does not disclose a cause of action and liable to be rejected. The first plaintiff admitted the partition decree in O.S. No.15 of 2011 on the file of the District Munsif Court, Tindivanam. An appeal preferred against the same in A.S. No.43 of 2013 on the file of Sub Court, Tindivanam was also dismissed for default [however, when this Court checked the E-Court website, it is seen that the appeal was contested and allowed, but no



Judgment is uploaded]. The Partition Deed and the Rectification Deed in respect of which declaration is sought for are acted upon and cannot be cancelled. It was further averred that the first plaintiff, defendants 1 and 2, and late Krishnan, in the said Partition Deed, all the joint properties except the house property [Item No.8 of Suit 'A' schedule properties] was partitioned. As far as the house property is concerned, it was partitioned orally prior to the said Partition Deed and that is the reason why the same is not mentioned in the Partition Deed. In the oral partition, 2 ½ Cents were allotted to second defendant and 2 ½ Cents were allotted to his wife / fifteenth defendant; out of the total 5 Cents [2 ½ + 2 ½], defendants 2 and 15 executed a Sale Deed in favour of sixteenth defendant in respect of 4 ½ Cents and later the said 4 ½ Cents was purchased by second defendant in his name from sixteenth defendant. Hence, the sixteenth defendant is not a necessary party and the purchased extent of 4 ½ Cents is second defendant's separate property in which the plaintiff has no right to seek partition. These are the averments in the said written statement among the other averments including that of non-joinder of necessary parties of sisters of first plaintiff, defendants 2 and 3 and late Krishnan.

7. When the case was posted for trial, the plaintiff filed the Interlocutory Application in I.A. No.225 of 2018 seeking to amend the



plaint. Adjacent to Item No.8 of Suit 'A' schedule properties measuring 12 Cents, one Jayaraman owned 4 ½ Cents. The first plaintiff and the said Jayaraman entered into a Sale Agreement dated July 9, 1989 and possession was handed over to first plaintiff. Thereafter, Jayaraman passed away and his wife - Panchali, pursuant to the Sale Agreement, executed Sale Deed dated July 28, 1994 in favour of first plaintiff. Further, the plaintiffs seeks to make a modification by way of first amendment to the effect that this 4 Cents along with the 12 Cents in Item No.8 of Suit 'A' schedule properties was partitioned. Out of the total 16 1/2 Cents, 2 ¼ Cents were allotted for pathway; 6 Cents abutting the street was allotted equally between first plaintiff and first defendant; 3 ¼ Cents abutting the southern boundary of the said 6 Cents was allotted to second defendant; and 4 Cents further south was allotted to legal heirs of late Krishnan. The plaintiffs seek to incorporate the said details and consequently change 12 Cents against Item No.8 of Suit 'A' schedule properties as 16 1/4 Cents in the Suit description of property. The Sale Agreement dated July 9, 1989 and the Sale Agreement dated July 28, 1994 could be found only now and hence the details could not be incorporated at the time of filing Suit.

8. The contesting defendants filed a counter wherein they averred that there was no mention about alleged Sale Deed dated July 28, 1994 in



the plaint in the present Suit, as well as the first plaintiff's pleadings in earlier Suits, and the amendment sought for is in no way relevant to the plaintiffs' case. The plaintiff cannot incorporate the adjacent 4 Cents acquired after the Partition Deed dated June 19, 2008 that too merely on the basis of Sale Agreement without any Sale Deed was executed in favour of first plaintiff.

9. The Trial Court after hearing both sides, dismissed the Interlocutory Application stating that the Sale Agreement dated July 9, 1989 and the Sale Agreement dated July 28, 1994 were not mentioned in the earlier Suits; that the property covered under the said two Sale Agreements are not covered under the Partition Deed and the Rectification Deed; that the case is now posted for trial and the amendment petition has been filed belatedly after three years from filing of Suit with a view to drag on the proceedings.

10. Assailing the Dismissal Order of the Trial Court, the present Civil Revision Petition has been filed by the petitioners / plaintiffs.

11. Ms.R.Saritha, learned Counsel appearing for the revision petitioner reiterating the aforementioned plaint and petition averments, would argue that though the case is posted for trial, trial not yet



commenced. In these circumstances, the Trial Court ought to have allowed the amendment. The Trial Court mechanically dismissed the Interlocutory Application. Accordingly, she would pray to allow the Civil Revision Petition, set aside the Trial Court's Order and allow the Interlocutory Application.

12. *Per contra*, Mr.Mohanraj, learned Counsel appearing for Respondent Nos.2, 8, 15 would reiterate the counter statement filed in the Interlocutory Application and argue that the amendment petition was filed three years from the date of plaint with an intention to drag on the proceedings and the amendment is not permissible also on the ground that no Sale Deed was obtained by the first plaintiff. The amendment seeks to alter the character and nature of Suit. If amendment is allowed, more parties would have to be impleaded resulting in delay which is the ultimate intention of the plaintiffs. The plaintiffs' ulterior motive is to cause delay and harass the defendants. The Trial Court rightly dismissed the Interlocutory Application. Accordingly, he would pray to dismiss the Civil Revision Petition.

13. Heard on either side. Perused the materials available on record.



14. It is admitted case of the parties that the 12 Cents house property in Item No.8 of Suit 'A' schedule properties was not covered in the Partition Deed dated June 19, 2008 as well as in the Rectification Deed dated October 24, 2008 which are under challenge. It is also an admitted fact that before the said Partition Deed, there was an oral partition *qua* the said house property, though the allotment thereunder is slightly under dispute. They seek to amend to bring in pleadings to the effect that he purchased adjacent 4 Cents and the same was partitioned along with the 12 Cents house property as elaborated above. Whether the said 4 Cents was purchased through Sale Deed by the first plaintiff, whether the same was partitioned along with the house property and the allotment of shares in the oral partition, *etc.* can be decided only after trial. Moreover, the Suit filed by defendants 2, 15 and 16 in O.S. No.15 of 2011 on the file of the District Munsif Court, Tindivanam was decreed and it appears from E-Court portal that the Judgment and Decree of the Trial Court was reversed in A.S. 43 of 2014 on the file of Sub Court, Tindivanam *vide* Judgment and Decree dated December 22, 2020, however, the Judgment and Decree are not available in the E-Court portal nor have been they filed before this Court by either of the parties. Further, though the matter has been posted for trial, trial has not yet commenced. Under such circumstances, this Court is of the view that the proposed amendment is not going to cause any prejudice



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to the defendants, on the other hand, it would help to adjudicate the matter once and for all. The Trial Court is not right in dismissing the Interlocutory Application. To avoid multiplicity of proceedings and in the interest of justice, this Court is of the view that Civil Revision Petition shall be allowed.

15. In fine, the Civil Revision Petition is allowed. The dismissal Order of the Trial Court passed in I.A. No.225 of 2018 in O.S. No.172 of 2016 is set aside. The Interlocutory Application is allowed. Needless to mention that the defendants are entitled to file additional written statement *qua* pleadings incorporated / modified by way of the amendment. In view of the facts and circumstances of this case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

05 / 03 / 2026

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
TK

To

The Additional Subordinate Court
Tindivanam.



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R.SAKTHIVEL, J.

TK

PRE-DELIVERY ORDER MADE IN
CRP NO.23 OF 2023

05 / 03 / 2026