



A.No.2499 of 2025 in
C.S.No.31 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2025

CORAM :

THE HONOURABLE MR.JUSTICE P.DHANABAL

A.No.2499 of 2025 in
C.S.No.31 of 2025

Lakshmi Sundara Raj

... Applicant

Vs

1. Kalpana Satish
2. S.Rajasekar
3. Hema Balaji
4. R.Jussvanth
5. State Bank of India
RACPC Branch,
No.16, Whannels Road,
Egmore, Chennai – 600 008
rep. By its Branch Manager
6. Satish

... Respondents

PRAYER: Application filed under Order XIV Rule 8 of O.S.Rules r/w Order 1 Rule 10(2) and Section 151 of CPC to (i) implead Mr.Satish, proposed 6th defendant as necessary party to the suit (ii) include Schedule Mentioned Property as Plaint D Schedule Property and (iii) to grant an order of ad-interim injunction restraining the 6th respondent / proposed 6th defendant, their men, agents and servant any person directly or indirectly from in any manner encumbering the suit schedule property till the disposal of the above suit.



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For Applicant : Mr.K.Moorthy
For Respondent : Mr.V.Meenakshi Sundaram for R1
Mr.R.Mubarak Basha for R2 to R4
R5 – Served – No appearance
Mr.V.Chandrasekaran for R6
(proposed party)

ORDER

This application has been filed by the applicant to implead the proposed party as 6th defendant as necessary party to the suit.

2. The brief facts of the applicant are as follows:-

(i) The applicant is the 1st defendant in the main suit and the plaintiff has filed the suit for partition as against the applicant and others. The main suit itself is not maintainable and the suit is barred by limitation. In fact, the suit properties are self acquired properties of the applicant's late husband Munisamy Sundararaj and there are no ancestral properties as alleged by the plaintiff in the hands of the husband of the applicant / 1st defendant. The husband of the applicant died on 01.04.1992 and her husband executed a Will in her favour bequeathing all the properties, both movable and immovable properties and the said fact was known to the 1st respondent / plaintiff. The fixed deposit amount, GPF, gratuity, Gold Bonds and Lombard Bank as mentioned in the Schedule I of the will dated 04.12.1980 executed by her husband were all utilised by her for the educational and marriage

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expenses of her children, viz., 1st respondent / plaintiff herein. The property at No.48, Vinobaji Street, Choolaimedu, Chennai was purchased in the name of the proposed 6th defendant, Mr.Sathish, through sale deed dated 10.12.1995 and major contribution of Rs.3,50,000/- out of the entire sale consideration of Rs.5,50,000/- was made from the assets of Mr.Sundarraaj and the said fact was completely suppressed by the 1st respondent / plaintiff.

(ii) The husband of the applicant on 26.10.1980 had written a letter to Midland Bank to transfer the payable funds in favour of the applicant, in case of his death, subsequently her husband executed a Will dated 04.12.1980, declaring the amount held with midland bank in her favour. Subsequently, on 17.12.1991 her husband sent another letter to Midland bank to transfer 10,000 pounds to Glassgow towards his medical expenses and the said sum was transferred to one Dr.N.V.Doraiswamy at Glasgow, after the demise of her husband, balance amount held with Dr.N.V.Doraiswamy was transferred to the 1st respondent / plaintiff through demand draft dated 06.04.1995 and on 17.04.1995, the said cheque was deposited in joint account held by the 1st respondent / plaintiff and her husband, Sathish, who is the proposed 6th defendant.



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(iii) Subsequently, the said amount was transferred to the vendor

of the suit schedule property and the sale deed was executed on 10.05.1995, therefore, the said property was purchased from the estates of Munisamy Sundararaj, which was bequeathed in favour of the applicant / 1st defendant and thereby she is entitled for proportionate share in the said property. The applicant / 1st defendant also filed counter claim by claiming share in the said property purchased by the proposed party and therefore, it is necessary to implead the husband of the plaintiff, namely, Satish, as necessary party to the suit and without impleading him, the counter claim cannot be adjudicated. Therefore, the proposed defendant is proper and necessary party to the suit and the present property also to be included as plaint 'D' schedule property.

3. The brief facts of the case of the 1st respondent / plaintiff are as follows:-

(i) The 1st respondent / plaintiff filed counter by denying averments in the petition and according to the 1st respondent, this application is not maintainable and the proposed party is neither proper nor necessary party to the suit. The suit is for partition between the applicant and the legal heirs of her deceased father, Munisamy Sundararaj. The applicant herself admitted that the suit properties are self acquired properties of Munisamy Sundararaj and not ancestral



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properties. The claim of the 1st respondent / plaintiff is that the suit properties were purchased out of funds derived from the monies, savings, settlement benefits of her deceased father. The 1st respondent's father died intestate on 01.04.1992 and she was unmarried at the time of demise of her father. At the time of filing petition in O.P.No.18 of 2020 for Probate of Will, the 1st respondent came to know about the existence of the Will and she filed a caveat and the said Original Petition was converted into T.O.S, which is in trial stage.

(ii) The said Will dated 04.12.1980 itself is a forged one and the same is pending for adjudication in T.O.S.No.5 of 2021. The property was purchased by the 1st respondent's husband and claiming over her husband's property, is nothing only to harass and humiliate the husband of the 1st respondent. The said property was purchased by her husband in the year 1995 and only as a counter blast to the suit and to harass 1st respondent / plaintiff, this application has been filed and the petition is liable to be dismissed.

4. The proposed party / 6th respondent filed counter that the petition is not maintainable. The application is filed only for the simple reason that his wife has challenged the validity of the alleged will relied

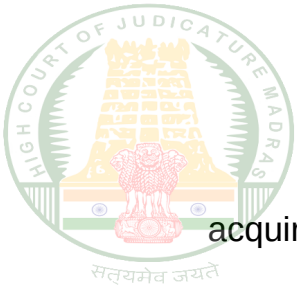


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upon by the applicant. The property was exclusively purchased by him

on 10.05.1995 through registered sale deed. The applicant filed this petition after 30 years and the same cannot be entertained. Even according to the applicant, her husband had requested Dr.Doraiswamy, third party and not the applicant to send certain amount. The applicant / 1st defendant prearranged to receive the alleged amount of Rs.3,50,000/- from Dr.Doraiswamy utilising the opportunity of the proposed party purchasing the property, accordingly, the applicant / 1st defendant after consulting with her accountant, obtained necessary formats and instructed Dr.Doraiswamy and his wife to act precisely as planned by her. There is no evidence that the applicant had contributed for the purchase of subject property. When the amount owned by third party there is no basis for any such pleadings by the applicant. The present application is filed only to harrass the wife of the 6th respondent. After purchase of the property, the 6th respondent had put up construction on his own funds and he is absolute owner of the property, therefore, the 6th respondent is neither proper nor necessary party to decide the proceedings and the application is liable to be dismissed.

5. The learned counsel appearing for the applicant would submit that the 1st respondent / plaintiff has filed the suit as against the applicant / 1st defendant and others for partition in respect of self

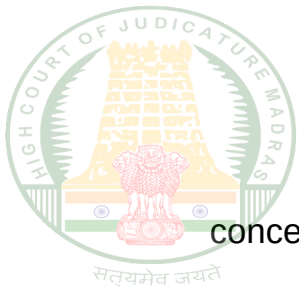


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acquired property of the husband of the applicant / 1st defendant. The

husband of the applicant executed a Will dated 14.12.1980. Now, the probate proceedings are pending, while so, the 1st respondent / plaintiff filed a suit for partition. The plaintiff failed to include all the properties and the petition mentioned property was purchased in the name of the proposed party, who is the husband / 1st respondent / plaintiff and the applicant's husband's money was utilised for purchase of the said property and the husband of the applicant entrusted money to Dr.Doraiswamy and the said Dr.Doraiswamy transferred money of Rs.3.5 Lakhs to the joint account of the plaintiff and the proposed party and the sale price was transferred to the account of the vendors and thereby the said property was purchased through the funds of the husband of the applicant / 1st defendant, therefore, that property has to be included and the proposed party is a proper and necessary party to this proceedings.

6. Further, the learned counsel for the applicant / 1st defendant would submit that since already the applicant / 1st defendant also filed counter claim by including the proposed party and the property was also included in the counter claim, the said property has to be also included as schedule 'D' suit property and the proposed party has to be impleaded as 6th defendant in the suit. As far as the partition suit is



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concerned, all the properties have to be included and all the parties have to be impleaded. In this case since the funds of the 1st defendant's husband were utilised for the purchase of the property, the suit property has to be included and the proposed parties are also necessary parties. To support his contention, he relied on the following Judgments:-

(i) Razia Begum Vs. Sahebzadi Anwar Begum and Others 1958 reported in SCC Online SC 77

(ii) Vidur Impex & Traders (P) Ltd Vs. Tosh Apartments (P) Ltd., reported in 2012 8 SCC 384

(iii) A.V.Murugan Vs. K.Maheswari reported in 2019 SCC Online MAD 39139

(iv) Gandhi Vs. Saminatha Gounder and Another in S.A.No.1191 of 1994 reported in 2006 (1) CTC 267

(v) Hemraj Gyaniram Patle Vs. Yamunabai and others reported in 1996(2) Mh.L.J.844

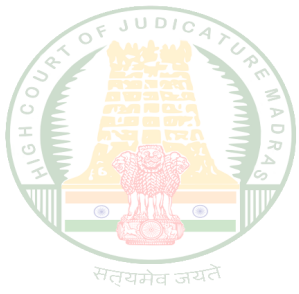
(vi) Jag Mohan Chawla and Another Vs. Dera Radha Swami Satsang and Others reported in 1996 (4) SCC 699

(vii) C.Kasinathan, LR of S.P.Chidambaram Servai Vs. N.Athaiappa Servai and 2 others reported in 1997(2)CTC 717

(viii) Ganesh Tiwari & Anr., Vs. Ramakant Tiwari & Ors reported in 2007 AIHC 1806

(ix) Solavaiammal & Others Vs. Ezhumalai Goundar & Anr reported in MANU/TN/4490/2011

(x) S.Suresh Kumar Vs. S.Savithiri & 6 others reported in CRP(PD)No.4745 of 2013



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(xi) T.Ashok Surana & Anr Vs. T.Suresh Surana & Anr reported in (2018) 3 CTC 839

(xii) Punnakal Suresh Vs. Saraswati reported in AIR 2019 Kerala 48

(xiii) Jeyapaul Vs. Rajammal & Anr., in C.R.P.(PD) (MD) No.830 of 2020

(xiv) Muthuvel (Died) & 12 Others Vs. Kalyana Sundaram & 8 Others in CRP No.1285 of 2021

(xv) Selvam and 3 Others Vs. Raj in CRP (MD) No.2022 of 2022; CRP (MD) No.9243 of 2022.

(xvi) Azgar Barid by Legal Representatives and Others Vs. Mazambi alias Pyaremabi and Others reported in (2022) 5 SCC 334

(xvii) Sudha Vs.S.Thangavel & Another reported in 2022 SCC Online Mad 9320

(xviii) A.Ramachandra Pillai Vs. Valliammal (Died) in Appeal No.776 of 1977.

7. The learned counsel appearing for the 1st respondent/plaintiff would submit as follows:-

(i) The 1st respondent / plaintiff has filed a suit for the relief of partition and the 1st defendant is none other than the mother of the plaintiff and according to the 1st defendant, her husband / deceased father of the plaintiff had executed Will dated 14.12.1980 and the same is pending for adjudication in TOS No.5 of 2021. Since the 1st respondent / plaintiff contested the Testamentary proceedings, the applicant filed this application to harass the plaintiff / 1st respondent.

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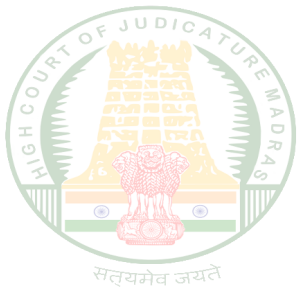
Though the application has been filed to include the properties in the

Judges summons, however, only prayed for impleading proposed party and no judges summons was taken to include the property.

(ii) According to the applicant / 1st defendant, the property was purchased by the proposed party by using the funds of the deceased husband of the applicant / 1st defendant. The property was purchased as early as on 10.12.1995 through the own funds of the proposed party and the alleged transactions are between the plaintiff and one third party Dr.Doraisamy, therefore, the transaction between the said Dr.Duraisamy, nowhere connected to the suit property and after 30 years, the applicant has filed this application only to harass the 1st respondent / plaintiff.

(iii) As far as the suit for partition is concerned, the plaintiff is the *Dominus Litis* and the defendant cannot compel to implead any party and to include any property. The property was purchased by the proposed party through his own earnings and the suit is only in respect of the properties of the deceased father of the plaintiff and the husband of the 1st defendant, therefore, the property is no way connected to the family of the plaintiff and the 1st defendant, therefore, the application has no merits and liable to be dismissed.

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(iv) The learned counsel appearing for the respondent also relied

on the following Judgments:-

(I) Satyender Vs. Saroj reported in Civil Appeal No.4833 of 2022

(Arising out of SLP(C) No.948 of 2018)

(ii) Rajul Manoj Shah Alias Rajeshwari Rasiklal Sheth Vs.

Kiranbhai Shakrabhai Patel & Anr in Civil Appeal No.--- of 2025 (Arising

out of SLP(C) No.5635 of 2023

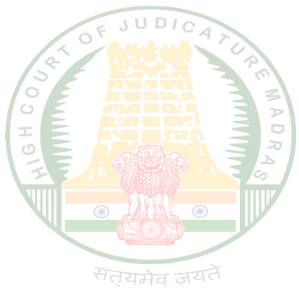
(iii) Sanjay Tiwari Vs. Yugal Kishore Prasad Sao & Ors. In Civil Appeal

No. of 2025 @ (Spl. Leave Petition (C) No.11050 of 2025)

8. Heard the learned counsel on either side and perused the documents placed on record.

9. In this case, the 1st respondent / plaintiff has filed a suit as against the applicant / 1st defendant for partition in respect of the properties of the father of the 1st respondent / plaintiff, who is the husband of the applicant / 1st defendant. The applicant / 1st defendant admitted that the properties are self acquired properties and her husband is the father of the 1st respondent/ plaintiff. However, according to the applicant / 1st defendant, her husband executed a will dated 14.12.1980 and the 1st respondent / plaintiff denied the said execution of the Will and thereby separate proceedings in T.O.S. No.5 of 2021 is pending before this Court for adjudication.

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10. Further, the 1st respondent / plaintiff has filed a suit for partition as against the properties of her father. The applicant / 1st defendant filed the written statement along with counter claim. In the counter claim, she claimed partition over the property, which is not the subject matter of the suit and also by including the purchaser of the said property, who is not a party to the suit and thereafter filed the present application to implead the purchaser of the property as 6th defendant in the main partition suit.

11. According to the applicant / 1st defendant, the property was purchased by the proposed party, who is the husband of the 1st respondent / plaintiff through the funds of her deceased husband and the money was paid through the account in the Midland bank by Dr.Doraisamy, who had custody of the funds of deceased Muniasamy Sundararaj and the 1st respondent / plaintiff requested to transfer the funds of Rs.3,50,000/- and the same was transferred to the joint account of the plaintiff and the proposed party and the property was purchased through that fund and the sale price money was transferred from the joint account of the 1st respondent / plaintiff and the 6th respondent proposed party. Therefore, the property was purchased on 10.12.1995 by utilising funds of the applicant / 1st defendant, thereby

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the applicant / 1st defendant has filed a counter claim as against that property by including the proposed party in the counter claim.

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12. It is not known as to how the Registry entertained the counter claim as against the 3rd party, who is neither the plaintiff nor defendant in the suit and entertained the counter claim by including a fresh property. It is well settled law that as far as counter claim is concerned, it is maintainable between the plaintiff and the defendant and not maintainable between the co-defendants. As far as partition suit is concerned, each of the parties can be treated as plaintiff. However, the proposed party is not a joint family member of the plaintiff and the defendant. Simply because the applicant / 1st defendant filed counter claim by including a new property as against the 3rd party he cannot be termed as proper and necessary party to the partition suit, in which, the said property is not at all the subject matter.

13. It is also well settled law that as far as the partition suit is concerned, the defendants cannot compel the plaintiff to include the property, who is *dominus litis*. It is the duty of the defendants to bring to the knowledge of the Court about non-inclusion of the properties and thereby the only remedy available to her is, she can file a fresh suit for partition as against that property and the plaintiff has to face



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consequences of partial partition. This aspect was already settled by

the **Hon'ble Division Bench of this Court in the case of Solavaiammal Vs. Exhumalai Gounder [C.R.P.(PD) No.3006 of 2010 dated 16.11.2011]**

14. The property was purchased by the third party, i.e, proposed party on 10.12.1995, but the applicant / 1st defendant has not taken any steps for the past 30 years and now after filing the suit for partition by her daughter / the 1st respondent, the applicant has filed this application. The applicant has not filed any application to include the suit property as one of the property to the suit. Though in the prayer, applicant sought for including the suit property as 'D' schedule property in the plaint, no Judges summons was taken and as per Judges summon, there is only a prayer for impleading proposed party as 6th defendant in the main suit.

15. The plaintiff has not included the said property, which stands in the name of third party, her husband, i.e., proposed party, if at all the applicant / 1st defendant has any right over the property, her remedy is, to file a separate suit. Even according to the applicant, all the properties are self acquired properties of her husband and her husband executed will dated 14.12.1980 and the same is now under

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consideration for grant of Letters of Administration. The present property sought to be included has not been mentioned in the Will and there are no recitals in respect of the these properties. The applicant / 1st defendant has not filed any suit as against the said property and now, only by way of counter claim, that too seeking prayer against 3rd party, cannot compel the plaintiff to include the properties and to implead the third parties.

16. At this juncture, it is pertinent to point out the judgment referred by the learned counsel for the applicant in **Sudha Vs.S.Thangavel & Another reported in 2022 SCC Online Mad 9320** , wherein this Court held that the plaintiff must implead all proper and necessary parties in the suit for partition. The necessary and proper parties must be made as parties to the suit in order to decide the controversies completely and finally, in order to avoid multiplicity of proceedings. When the defendants take a plea of non-joinder of parties and if the plaintiff fail to implead necessary party, the suit is liable to be dismissed. Further, in the case of **Razia Begum Vs. Sahebzadi Anwar Begum and Others 1958 reported in SCC Online SC 77**, wherein the Court held that Order 1 Rule 10 is the judicial discretion, which has to be exercised in view of all the facts and circumstances of the particular case, the court has discretion add as a party as defendant



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only a person, who is directly interest in the subject matter of the litigation and not a person, who will be only indirectly or commercially affected.

17. Further, the learned counsel appearing for the applicant also relied on the following Judgments:-

(i) Vidur Impex & Traders (P) Ltd Vs. Tosh Apartments (P) Ltd., reported in 2012 8 SCC 384

(ii) A.V.Murugan Vs. K.Maheswari reported in 2019 SCC Online MAD 39139

(iii) Gandhi Vs. Saminatha Gounder and Another in S.A.No.1191 of 1994 reported in 2006 (1) CTC 267

(iv) Hemraj Gyaniram Patle Vs. Yamunabai and others reported in 1996(2) Mh.L.J.844

(v) Jag Mohan Chawla and Another Vs. Dera Radha Swami Satsang and Others reported in 1996 (4) SCC 699

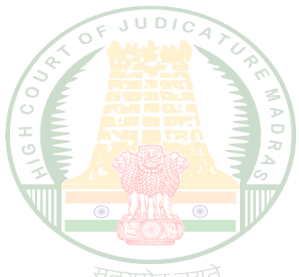
(vi) C.Kasinathan, LR of S.P.Chidambaram Servai Vs. N.Athaiappa Servai and 2 others reported in 1997(2)CTC 717

(vii) Ganesh Tiwari & Anr., Vs. Ramakant Tiwari & Ors reported in 2007 AIHC 1806

(viii) Solavaiammal & Others Vs. Ezhumalai Goundar & Anr reported in MANU/TN/4490/2011

(ix) S.Suresh Kumar Vs. S.Savithiri & 6 others reported in CRP(PD)No.4745 of 2013

(x) T.Ashok Surana & Anr Vs. T.Suresh Surana & Anr reported in (2018) 3 CTC 839
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(xi) Punnakkal Suresh Vs. Saraswati reported in AIR 2019 Kerala

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(xii) Jeyapaul Vs. Rajammal & Anr., in C.R.P.(PD) (MD) No.830 of 2020

(xiii) Muthuvel (Died) & 12 Others Vs. Kalyana Sundaram & 8 Others in CRP No.1285 of 2021

(xiv) Selvam and 3 Others Vs. Raj in CRP (MD) No.2022 of 2022; CRP (MD) No.9243 of 2022.

(xv) Azgar Barid by Legal Representatives and Others Vs. Mazambi alias Pyaremabi and Others reported in (2022) 5 SCC 334

(xvi) A.Ramachandra Pillai Vs. Valliammal (Died) in Appeal No.776 of 1977.

18. On a careful perusal of the above said judgments, it is clear that the proper and necessary party, means the person, who ought to have been joined a party and in his absence, no adverse decree can be passed at all by the court and the proper party is a party, who is though not necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all the matters in dispute in the suit. The doctrine of *dominus litis* will not strictly apply in a suit for partition since in such a suit, even the defendants can be considered as plaintiffs as they are claiming shares in the property and the counter claim would be treated as a plaint and it is governed by the rules applicable to the plaints. Further, the defendants can claim any right by way of counter claim in respect of any

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cause of action that is accrued on him, even though it is independent of

cause of action averred by the plaintiff and have same cause of action,

adjudicated without relegating, the defendants to file a separate suit and

in the suit for partition, each defendant is entitled to seek partition and

separate possession of his share by paying separate possession of his

share by paying the specifically prescribed court fee for such purpose.

Similarly when a defendant seeks partition, the relief is sought not only

against the plaintiff but against co-defendants also. Also it is clear that

in the suit for partition in the event, the plaintiff has only included only

certain properties as if they are available for partition and leave some

other properties, which are also available for partition, the request of the

defendant in such event to include the left-out properties in plaint

schedule would not in any way amount to altering or changing the

character of the suit. In a partition suit, even the defendant can file a

petition to amend the plaint by adding properties, who have been

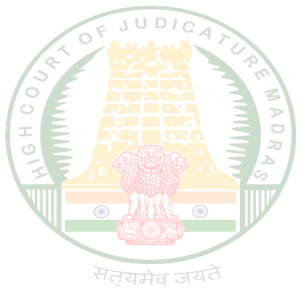
omitted or adding properties, which had been left out by the plaintiff and

also it is clear that in the suit for partition, the position of the plaintiff and

defendant can be interchangeable, each party adopts the same position

with other parties as main suit is pending and the defendant can also

transpose as plaintiff and the plaintiff can also transpose as defendant.



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19. In the case on hand, the plaintiff filed a suit for partition and

the applicant / 1st defendant filed counter claim as against the third party. It is an admitted fact by both the parties that the properties are self acquired properties and one deceased Munisamy Sundararaj. Merely because the funds were transferred from the third party to the joint account of the proposed party and the property was purchased thereafter and in respect of that property after 30 years, the applicant cannot implead him as one of the party. Even according to the applicant, there is a Will executed by her husband where the properties sought to be included were not returned and the proposed party also not party to the testamentary proceedings and thereby it is only an attempt to harass the plaintiff and therefore, the above said judgments relied on by the learned counsel appearing for the applicant no way helpful to decide the case in her favour.

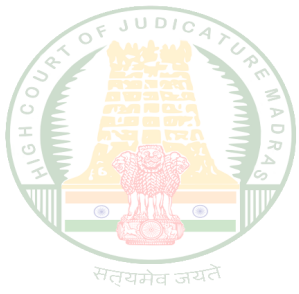
20. It is pertinent to point the following Judgments relied on by the learned counsel for the respondents:-

(I) Satyender Vs. Saroj reported in Civil Appeal No.4833 of 2022 (Arising out of SLP(C) No.948 of 2018)

(ii) Rajul Manoj Shah Alias Rajeshwari Rasiklal Sheth Vs. Kiranbhai Shakrabhai Patel & Anr in Civil Appeal No.--- of 2025 (Arising out of SLP(C) No.5635 of 2023)

(iii) Sanjay Tiwari Vs. Yugal Kishore Prasad Sao & Ors. In Civil Appeal No.--- of 2025 (Spl. Leave Petition (C) No.11050 of 2025)

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21. On a careful perusal of the above judgments, it is clear that no time limit has been prescribed in Order 8 Rule 6 of CPC to submit counter claim. Further it does not mean that the counter claim can be taken on record on any time after submitting a reply and counter claim must be filed seeking relief against the plaintiff and cannot be filed against the co-defendant, any counter claim must necessarily deal with the defendants cause of action against the plaintiff and the defendant must first establish her right to claim over the property, which is absent till he succeeds. The defendant must first establish a right to claim over the property and only thereafter, the question of setting up counter claim against the plaintiff may arise. Further, the counter claim against the co-defendant cannot survive and the same has to be rejected and it is also clear that the counter claim must be against the plaintiff and if the plaintiff had not claimed any right over property and the properties are not even part of the suit property described in the plaint, the counter claim is not maintainable and such a counter claim should have been excluded in terms of Order 8 Rule 6 of CPC.

22. In the case on hand also, the plaintiff has not claimed right over the suit property and that the property is not the subject matter of the suit and therefore merely because the counter claim has been filed



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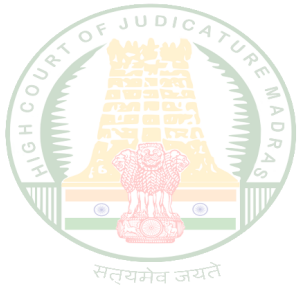
in respect of the property, it is not the subject matter of the main suit

and without including the suit property as schedule of property, in the present suit, the owner of the property cannot be stated as he is also proper and necessary party to the suit. The applicant has not taken any steps to include that property as one of the suit properties and the suit property was purchased in the year 1995 and the suit is filed for the family properties of the deceased Munisamy Sundararaj and the property stands in the name of third parties, as per plaint this property is not the joint family property of the plaintiff and the 1st defendant, therefore, the proposed party is neither proper nor necessary party to the suit and without his presence, the suit can be disposed of effectively and without including the property as one of the suit property, the proposed party cannot be impleaded as proper and necessary party to the proceedings.

In view of the above said discussions this petition has no merits and deserves to be dismissed and accordingly, the present application is dismissed.

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