

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **25.9.2015**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) Nos.3529, 3530 of 2012

Natarajan : Petitioner
versus

1.Gopal

2.Durai

3.Bakkiyammal

4.Santhi

5.Devaki : Respondents

PRAYER: Revision filed against the fair and decreetal order of the learned Subordinate Judge, Tirupattur, Vellore district dated 10.7.2012 in I.A.Nos.114 and 115 of 2010 in O.S.No.47 of 2005.

For petitioner : Mr.T.M.Hariharan

For respondents : Mr.P.A.Suresh Kumar

COMMON ORDER

These two revision petitions are at the instance of the 2nd defendant in O.S.No.47 of 2005 and the challenge is to the orders dismissing the applications for impleading and amendment to the plaint.

Brief facts:-

2. The first respondent filed a suit in O.S.No.47 of 2005 before the

Sub Court, Triupattur, praying for a decree directing partition of the suit property into 16 shares and allotment of 5 such shares to him. The suit was opposed by the petitioner by filing written statement. As against the case of the 1st respondent that the properties are ancestral joint family properties, and it was acquired by joint family nucleus, the petitioner contended that in the oral partition that took place in the year 1980, the properties were divided between Chinnaraji and his children and that there was no joint family or joint family properties thereafter. The petitioner also indicated that in case there was a joint family nucleus, then the properties purchased in the name of respondents 1 and 2 should also be included as items for partition.

3. The suit was taken up for trial and after completion of cross examination of witnesses on the side of 1st respondent, the petitioner filed an application in I.A.No.114 of 2010 to implead respondents 4 and 5 and I.A.No.115 of 2010 to include the properties in the name of respondents 4 and 5, in the schedule to the plaint.

4. The applications were opposed by the respondents 1 and 2. The first respondent maintained that the properties standing in the name of respondents 4 and 5 are their own properties and as such, the same are not liable to be partitioned.

5. The learned Trial Judge found that the petitioner has not produced

any acceptable material to show that the property in the name of respondents 4 and 5 were purchased with common nucleus and held that they are private properties, not liable for partition. Feeling aggrieved, the unsuccessful petitioner is before this Court.

Rival contentions :-

6. The learned counsel for the petitioner contended that the petitioner has already indicated in his written statement with respect to the property purchased by respondents 1 and 2 in the name of respondents 4 and 5 and the necessity to include those properties liable for partition. According to the learned counsel, the delay on the part of the petitioner to file the applications alone cannot be a reason to deny the request to include the joint family properties as items to be partitioned. It was further contended that the suit being one for partition, the entire property should be included in the suit schedule.

7. The learned counsel for the 1st respondent justified the impugned orders. According to the learned counsel, the petitioner has not produced any materials, much less acceptable materials, to prove that respondents 1 and 2 purchased property using common joint family funds in the name of respondents 4 and 5. According to the learned counsel, the applications were filed belatedly, after conclusion of trial and as such, the learned Trial Judge was perfectly correct in passing the impugned orders.

Discussion:-

8. The first respondent filed a suit in O.S.No.46 of 2005 for partition and separate possession of his 5/16 shares.

9. The first respondent in his plaint contended that the suit properties are ancestral joint family properties of Chinnaraji. The properties were all acquired with the joint family income. The suit items 1 to 9 were allotted to the share of Chinnaraji in the oral partition that took place about 40 years ago. Item no.10 was purchased in the name of Chinnaraji and items 11, 12 and 14 were purchased in the name of second respondent. Item No.13 was purchased in the name of the petitioner. In short, it was the contention of the 1st respondent that the properties were all purchased using the income from the joint family properties. The first respondent therefore wanted the properties, including the property sold to the petitioner by sale deed dated 8 February 2003, to be partitioned.

10. The petitioner in his written statement filed on 30 August 2006 contended that there was an oral partition in 1980 between Chinnaraji and his children. There was no joint family or joint family properties subsequent to the oral partition. The petitioner maintained that Chinnaraji sold portions of the properties allotted to him, by way of sale deed dated 5 March 1997 and 8 February 2003. It was the further contention of the petitioner that the first respondent purchased a portion from Chinnaraji by sale deed dated 8 February 2003. The petitioner has taken up a specific contention that he is

the absolute owner of the property purchased by him from Chinnaraji and the suit was filed with an evil motive to snatch away his property. Even though the petitioner in his written statement contended that the properties were purchased by respondents 1 and 2 in the name of respondents 4 and 5, there was no issue framed with regard to partial partition. This shows that the petitioner was not serious with respect to the said issue. The Trial Court framed necessary issues in the light of the plaint averments and written statement filed by the parties. It is a matter of record that only after conclusion of cross examination by the petitioner, the applications in I.A.No.114 of 2010 and 115 of 2010 were filed before the Trial Court to include the properties standing in the name of respondents 4 and 5, as plaint items and implead them as parties to the suit. Though the learned Trial Judge was not correct in his observation that there was no whisper in the written statement with regard to the non inclusion of certain items of properties for partition, still, he is correct in his ultimate finding that the issue to be decided is as to whether the said properties are joint family properties or self acquired properties or ancestral properties of the parties.

11. The petitioner has taken up a specific contention that there was an oral partition in 1980. The question of impleading respondents 4 and 5 as parties to the suit and including their properties for partition would arise only in case the petitioner produces prima facie materials. Merely because the first respondent has taken up a contention that the suit properties were purchased by using common funds, it cannot be said that even properties

standing in the name of respondents 4 and 5 should be declared as joint family properties. In case the petitioner was serious, he should have filed an application within a reasonable period. Even after framing issues, action was not taken by the petitioner to frame an additional issue with regard to partial partition. The belated action to include the properties of respondents 4 and 5 and their impleading as parties to the suit appear to be an afterthought and a counter blast. The petitioner has no case at any point of time that properties were purchased with the income earned from the joint family properties.

12. The question as to whether amendment of plaint in a suit for partition could be allowed at the instance of the defendant came up for consideration before a Division Bench of this Court in ***Solavaiammal vs. Ezhumalai Gounder, 2012(1) CTC 159***. The Division Bench after holding that in a suit for partition even a defendant is entitled to maintain an application for amendment, sounded a word of caution:-

19. However, in an application for amendment, the Court has to prima facie satisfy itself as to whether the properties are available for partition or not, as a detailed adjudication on the claim is improper. If there is a dispute over the inclusion of properties by the plaintiff contending that those properties are not available for

partition, the Court is certainly entitled to reject the application for amendment on that ground. In such event, the only course open to the defendant is to file a suit for partition by including those properties.

13. The petitioner has miserably failed to produce prima facie materials to show that respondents 4 and 5 have no independent income and as such, the properties were purchased in their name by respondents 1 and 2, by using the joint family income. The factum of filing applications at a belated stage also would prove that it was not a bona fide attempt on the part of the petitioner. I am therefore of the view that the learned Trial Judge was perfectly correct in dismissing the applications. I do not find any error or illegality in those orders, warranting interference by exercising revisional jurisdiction under Article 227 of the Constitution of India.

K.K.SASIDHARAN, J.

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14. In the upshot, I dismiss the Civil Revision Petitions. No costs.
Consequently, connected miscellaneous petitions are closed.

25.9.2015

Index:Yes/no
Internet : Yes/no

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To
The Subordinate Judge, Tirupattur, Vellore

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