

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2016

CORAM

**THE HON'BLE MR. JUSTICE T.MATHIVANAN**

**C.R.P (PD) No.2900 of 2011**

**&**

**M.P.No.1 of 2011**

1.Sri. Palanisamy  
2.Sri Ramasamy  
3.Sri.Selvaraj

... Petitioners

**Vs.**

1. Sri Palanisamy  
2. Sri.Subannan  
3. Sri.Muthusamy  
4. Sri.Nataraj @ Kaliappan

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and final order dated 31.03.2011 passed in I.A.No.23 of 2011 in O.S.No.360 of 2002 on the file of Additional Subordinate Judge, Tirupur.

For Petitioners : Mr.S.K.Rakhunathan

For Respondents : Mr.K.Goviganesan

**ORDER**

This memorandum of Civil Revision has been filed against the fair

and decretal order dated 31.03.2011 and made in I.A.No.23 of 2011 in O.S.No.360 of 2002 on the file of the learned Subordinate Judge, Tiruppur. Petitioners 1 to 3 are the plaintiffs in the suit, whereas the respondents 1 to 4 are the defendants.

2 As it is revealed from the records, the revision petitioners have filed the above said suit for partition, to divide items 1 to 3 of the suit properties into three equal shares and to allot one such share to the plaintiffs jointly and put them in separate possession and enjoyment thereon and to divide the properties described in Item No.2 into four equal shares and allot three such share to the plaintiffs. The suit was resisted by the respondents / defendants by filing their written statement.

3. During the pendency of the trial, the revision petitioners/plaintiffs had taken out an application as aforestated in I.A.No.23 of 2011 under Order VI Rule 17 CPC to amend the plaint as detailed in petition. What the revision petitioner/plaintiffs have contended in their affidavit filed in support of the petition is, that the fourth defendant's name has been mentioned in the plaint as K.Nataraj. The fourth defendant had also appeared before the Court and filed a memorandum stating that his name is K.Kaliappan and not K.Nataraj and therefore, based on the memorandum submitted by the fourth defendant, his name is to be amended in the plaint. Secondly, they have contended that the suit property was

purchased by their father and grandfather jointly and that their father is entitled to  $\frac{1}{2}$  share and their grandfather is entitled to the remaining  $\frac{1}{2}$  share. It is further stated that apart from their half share in the properties, they are also entitled to another half share in their grandfather's share in the property and therefore, they have come forward with this petition to amend the plaint.

4. On the other hand, the respondents/defendants have refuted the averments made in the affidavit filed in support of the petition and it is stated in the original plaint that the revision petitioners have admitted that the suit property is the joint family ancestral property and they have also claimed half share in the same and hence, the revision petitioners/plaintiff cannot now take an 'U' turn and say that half of the property is the self- acquired property of their father. They have also contended that the nature of the suit property cannot be taken away or withdrawn by filing an application under the guise of amendment. They have also contended that such a mistake said to have been crept in the plaint with reference to enlargement of share in which petitioners are entitled cannot be accepted and further the application is filed belatedly. Thirdly, they would contend that the third item was already included in the plaint and it is absolutely wrong to say that the third item was not included. The property mention as Item No.3 was partitioned among sharers long back in the final decree proceedings passed in the suit in

O.S.No.488 of 1949. In respect of the property described in Item No.3 apart from the parties to the suit, there are several other shareholders and they are also having share in the third item of property. Since the third item was already partitioned as per the final decree passed in the above said suit in O.S.No.488 of 1949, the claim of the revision petitioners to subject the third item of property once again for partition is highly unsustainable. Therefore, the respondents have urged to dismiss the petition.

5. However, the learned trial Judge, after hearing both sides, has observed that the proposed amendment will create new cause of action and new case. He has also found that the suit was filed as early as in the year 2002 and to drag on the proceedings alone this petition was filed. However, the learned trial Judge had retracted his own finding and concluded that considering the argument advanced on behalf of both sides and on perusal of relevant records, it is concluded that the petitioner is not entitled to the relief sought for in the petition and therefore the petition was dismissed. The said order has been impugned in this revision petition.

6. As afore stated with reference to the first relief is concerned i.e., amendment in respect of the name of the fourth defendant was allowed by the trial Court. Insofar as the other two reliefs are concerned, the petition

was dismissed. As rightly contended by the respondents, the third item of the property was already subjected to partition in accordance with the final decree passed in O.S.No.488 of 1949. When such being the case, the revision petitioners, being the plaintiffs, ought not to have come forward with this petition under Order VI Rule 17 CPC for making necessary amendment which is detailed in the petition. The learned trial Judge has correctly found that the proposed amendment definitely will create a new cause of action. Since the suit is pending from 2002, the learned trial Judge, considering the nature of the case, proceeded to dismiss the petition which according to this Court, does not require any interference.

Accordingly, the revision petition is dismissed. The learned trial Judge is directed to dispose of the suit in O.S.No.360 of 2002 within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

**19.10.2016**

Index: Yes/No  
Internet: Yes/No  
gpa

To

The Additional Subordinate Judge  
Tirupur



**T.MATHIVANAN.J.,**

gpa

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