

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.4723 of 2015

and

M.P.No.1 of 2015

T.S.Vijaya Rao

... Petitioner

vs.

1.V.R.Ramkumar
2.P.Amasvathi Bai
3.G.Jayathi Bai
4.D.Vasanthi Bai
5.T.S.Chitravathi Bai
6.V.R.Suresh Kumar
7.V.R.Ramesh Kumar
8.C.Udayavathi Bai
9.D.Suganthi Bai
10.T.S.Sivarama Rao
11.K.Sulochana Bai
12.S.Indurani Bai
13.G.Meera Bai
14.M.Anuradha bai
R.D.Kolekar (Died)
15.K.Jayanth
16.K.Pramila Bai
17.V.Manjula
18.T.V.Sanjithi
19.T.V.Sambath Raj

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order of the III Additional District Judge, Puducherry dated 03.11.2015 made in I.A.No.807 of 2015 in O.S.No.6 of 2012.

For Petitioner

: Mr.Ilanthirayan
for M/s.Sai, Bharath and Ilan

ORDER

The arguments advanced by Mr.Ilanthirayan, learned counsel appearing for M/s.Sai, Bharath and Ilan, counsel on record for the petitioner are heard.

2. This is a revision filed against the order of the trial court dated 03.11.2015 made in I.A.No.807 of 2015 in O.S.No.6 of 2012 permitting the respondents 1 to 9/plaintiffs in the original suit, to amend the plaint schedule by including one more property to the plaint schedule. The suit was filed for the relief of partition and separate possession of the properties left by the mother of the plaintiffs. During the pendency of the suit, the said application came to be filed on the premise that the said property which had been left out, was also the property left by their mother and that the respondents 1 to 9/plaintiffs should be permitted to amend the plaint so as to include that property also in the suit for partition.

3. The petition was resisted on the ground that the suit having been filed in the year 2011 itself, the attempt to include one more property was with a view to get over the bar of limitation in respect of the property sought to be added.

4. The respondents 1 to 9/plaintiffs contended that the existence of the said property was not known to them and only during the course of the proceedings in the suit, they came to know such existence and that immediately thereafter they approached the court with a petition for amendment. If at all the relief of partition in respect of the property sought to be added by amendment of the plaint is barred by limitation, the revision

petitioner, shall have every right to raise such a plea in the additional written statement to be filed after such amendment.

5. So far as the relief of partition of immovable properties is concerned, the possession by one co-owner may be deemed to be a possession on behalf of the other co-owners. Even if the co-owners, who figure as the plaintiffs, have been excluded from possession, the defendants have to show that the title of the co-owners filing the suit got extinguished by ouster or adverse possession, which cannot be decided in the petition for amendment. The omission of the plaintiffs to include certain properties, which according to them, are the properties of their mother and thus the properties available for partition among the parties to the suit may be projected at a later stage, as the ground for contending that the suit itself is bad for partial partition in case such property is proved to be that of the common ancestor. Such an impediment can be get over and the multiplicity of the proceedings can be avoided by permitting the plaintiffs to include the said property also as one of the properties regarding which partition is sought for.

6. In case the revision petitioner does have any objection regarding the valuation and payment of court fee, the increase in the market value is not going to make the trial court one having no pecuniary jurisdiction to entertain the suit. On the other hand, the revision petitioner can very well raise the question of the valuation and also the payment of court fee by way of additional written statement. Hence this court comes to the conclusion that the challenge made to the order passed by the learned trial judge on 03.11.2015 in I.A.No.807 of 2015 in O.S.No.6 of 2012 cannot succeed and the civil revision petition deserves to be dismissed at the threshold.

Accordingly, the civil revision petition is dismissed. However, it is made clear that the trial court after permitting the amendment, shall allow the revision petitioner and the other defendants, to file additional written statement and then proceed with the case. No costs. Consequently, the connected miscellaneous petition is closed.

04.02.2016

asr

To
The III Additional District Judge, Puducherry

P.R.SHIVAKUMAR, J.

asr/-

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