

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated : 21.10.2016**

CORAM

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

**C.R.P (PD).No.1708 of 2012**

**&**

**M.P.No.1 of 2012**

1.Kannan  
2.Natarajan

... Petitioners

**Vs.**

1.Manikammal  
2.Selvaraj  
3.Venkatesan  
4.Vijayalakshmi  
5.Poonkodi

... Respondents

Civil Revision Petition filed Article 227 of the Constitution of India to set aside the fair and decretal order dated 07.12.2011 and made in I.A.No.2155 of 2011 in O.S.No.454 of 2005 on the file of the First Additional District Munsif Court, Kallakurichi.

For Petitioners : Mr.P.Valliappan

For Respondents : Mr.V.Sasirekha

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**JUDGMENT**

The fair and decretal order dated 07.12.2011 and made in the application in I.A.No.2155 of 2011 are under challenge in this revision. The revision petitioners herein are the plaintiffs in the suit in O.S.No.454 of 2005,

whereas the respondents herein are the defendants

2. The revision petitioners have filed the above said suit as against the respondents herein and thereby sought the relief of partition in respect of first petitioner's 7/24th share. The second petitioner had purchased certain properties from the first petitioner and therefore, the second petitioner has also been arrayed as one of the plaintiffs.

3. The suit was resisted by the second defendant in the suit and after the completion of the examination of witnesses on both sides and when the matter stood posted for arguments, the petitioners, being the plaintiffs, had come forward with an application in I.A.No.2155 of 2011 to include certain family properties which were originally omitted to be included in the suit. This petition was contested by the respondents. However, the learned trial Judge had proceeded to dismiss the petition on the ground that this petition was filed belatedly that too at the stage of hearing of arguments on either side. Having been aggrieved by the impugned order, this petition is filed by the plaintiffs.

4. In the averments of the affidavit filed in support of the petition, the petitioners have stated that they came to know that some of the family properties were omitted to be included in the plaint schedule and unless and until those properties are included in the plaint schedule for being placed for partition, they would be put to irreparable loss and hardship.

5. Learned counsel for the petitioners has placed reliance upon the following decisions:

1. ***Puttamma and Others vs. Munusamy and 20 Others*** reported in ***2008 (5) CTC 548;***
2. ***Padma Vadivel Murugan Vs. Gomathi Kathiresan and Others*** reported in ***2010-L.W.668.***

6. In the decision first cited supra, in a partition suit, evidence was closed on both sides and the suit was posted for arguments. At that stage, the plaintiffs had filed an application for amendment praying for deletion of certain properties prescribed in 'A' schedule of application because of fact that Village Administrative Officer had deposed that those properties did not belong to joint family. Application was opposed on the ground that the amendment application would not satisfy the requirements of the proviso to Rule 17 of Order VI CPC. Under this circumstance, this Court has held that the power to allow amendment should be liberally exercised. Accordingly, the above said revision was allowed and the impugned order was set aside and in consequence thereof the amendment application was also ordered to be allowed.

7. In the decision second cited supra, it is held that Order VI Rule 17 CPC does not interdict an amendment which adds new reliefs unless it causes

injustice to the other party. The proposed amendment does not constitute an addition of a new cause of action, but it amounts to not more than adding to the facts already on record. The amendment, which is sought to be made in the plaint, is not going to change the character of the suit or going to introduce new cause of action.

8. But, it was contended on behalf of the respondents that the application itself was belatedly filed and since there was laches and slowness on the part of the plaintiffs, they could not be allowed to add the properties which were said to have been omitted to be included in the plaint schedule at this stage. Indeed the process of recording of evidence on behalf of both sides were completed and when the suit was posted for advancing arguments on either side, the petitioners, being the plaintiffs, had come forward with the above said application under Order VI Rule 17 CPC for making amendment in the plaint by inclusion of certain properties, which were omitted to be included.

9. It is trite law that no suit could be filed for piecemeal partition. It is not disputed by the respondents/defendants that those properties which are sought to be included are not the family properties. Even as per the case of the respondents/defendants, if those properties which are sought to be included are not included even at this stage, there will not be a completed judgment and the decree, which may be passed in the suit, would be a

decree for piecemeal partition, which would pave the way for multiplication of proceedings. Since the facts are already in existence, the proposed amendment would not in anyway affect the case of the respondents/defendant. Therefore, this Court finds that there may not be any obstacle in allowing the amendment as prayed for by the petitioners/plaintiffs.

10. Under this circumstance, this Court finds that in the interest of justice, the petition filed by the petitioners /plaintiffs is deserved to be allowed and the impugned order is to be set aside.

In the result, the revision petition is allowed and the impugned order dated 07.12.2011 is set aside and the application in I.A.No.2155 of 2011 is allowed. The learned trial Judge is directed to make necessary amendment in the plaint and after receiving additional written statement, if any, from the side of the respondents/defendants and after framing of additional issues, if any, the suit shall be disposed of within a prescribed period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

21.10.2016

Index: Yes/No  
Internet: Yes/No  
gpa



**T.MATHIVANAN.J.,**

gpa

To

The First Additional District Munsif Court  
Kallakurichi

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**<http://www.judis.nic.in>**