

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.167 of 2016

&

C.M.P.No.873 of 2016

Jayanthi

... Petitioner

vs.

1.Dr.Shankar

2.Dr.Sridhar

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 30.10.2015 passed in I.A.No.223 of 2015 in O.S.No.26 of 2011 on the file of the III Additional District Court, Salem.

For Petitioner : Mr.A.K.Kumaraswamy

ORDER

The second defendant in the original suit, who remained *ex parte* originally, later on was permitted to contest after setting aside the order setting her *ex parte*. It seems the second defendant wants to take a plea

that one of the family properties has been left out to be included in the plaint schedule. For the said purpose, the second defendant filed I.A.No.223 of 2015 on the file of the trial Court, namely the Court of the III Additional District Judge, Salem for amendment of the plaint schedule in O.S.No.26 of 2011 on the file of the said Court.

2. The learned trial Judge, after hearing, dismissed the said application by the order dated 30.10.2015, impugned in the present civil revision petition. The Civil Revision Petition stands listed today for admission.

3. The very fact that the petitioner in the Civil Revision Petition, who figures as the second defendant, wants to include one more item to the plaint schedule, will show that the revision petitioner is not against partition of the family properties and on the other hand, she wants partition of the entire family properties. In such an eventuality, the alternative courses available to the revision petitioner shall be either to contest the suit as one bad for partial partition or to seek partition of the left out property, in addition to the plaint schedule properties, by including a schedule in the written statement and a prayer for partition of the same and allotment of a share to her. Instead of adopting either of the said procedures, the petitioner seems to have chosen to seek amendment of the plaint.

4. The trial Court, technically speaking, has not committed any error. When the same has been brought to the notice of Mr.A.K.Kumaraswamy, learned counsel for the petitioner, he submits that the petitioner may be permitted to withdraw the Civil Revision Petition with liberty to file an additional written statement providing a schedule of the property, which has been left out in the plaint, seeking partition of that property also and allotment of a share to her by paying necessary Court fee. An endorsement to that effect has been made.

Endorsement is recorded. The Civil Revision Petition is dismissed as withdrawn with the liberty as indicated supra. No costs. Consequently, the connected Civil Miscellaneous Petition is also dismissed.

04.02.2016

Index: Yes/No
Internet: yes/No
gpa

Note: Issue order copy on 04.02.2016

To

II Additional District Court
Salem

P.R.SHIVAKUMAR.J.,

gpa

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