

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) No.1786 of 2016

and

C.M.P.No.9388 of 2016

1.Vanitha

2.Gokula Krishnan

... Petitioners

vs

1.Pappammal

2.Ranjitham

3.Mayavathi

4.Sumathi

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order of the learned Principal District Munsif, Cuddalore, passed in I.A.No.743 of 2015 in O.S.No.305 of 2013.

For Petitioner : Mr.M/s.C.B.Vishnu Dasan

ORDER

This revision challenges the order of learned Principal District Munsif, Cuddalore, passed in I.A.No.743 of 2015 in O.S.No.305 of 2013.

2. Heard learned counsel for petitioners

3. The respondents/plaintiffs have moved the suit in O.S.No.305 of 2013 seeking partition and separate possession of the property. The petitioners/defendants have moved the application in I.A.No.743 of 2015 towards including an item of property informing the same would also form part of subject matter for partition. It has been contended by the respondents/plaintiffs that the property sought to be included by the petitioners was not available for partition. In such circumstances, the Court below has dismissed the application in I.A.No.743 of 2015 by referring the Judgment in the case of Solavaiammal vs. Exhumalai Gounder reported in 2012(1) CTC 159:

“ 17. In a suit for partition, in the event the plaintiff has included only certain properties as if they are available for partition and leave some other properties which re also available for partition, the request of the defendant in such event to include the left out properties also in the plaint schedule would not in any way amount to alternating or changing the nature or character of the suit, as such an amendment is also necessary for an effective adjudication of the case and to avoid multiplicity of proceedings.

19. However, in a 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.”

4. Finding no error in the order of the Court below, the Civil Revision Petition shall stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.07.2016

Index : Yes/No
Internet : Yes/No
kkd

To

The Principal District Munsif,
Cuddalore.

C.T.SELVAM, J

kkd

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