

The petitioner filed a suit for partition in O.S.No.40 of 2012 before the Additional Sub Court at Mayiladuthurai. In the said suit, the first respondent filed a written statement contending that the suit is bad for partial partition. According to the first respondent, a particular item was not shown in the suit schedule and as such, the suit is liable to be dismissed.

2. Even though a contention was taken that one item of property was not included in the schedule, the petitioner failed to take steps to include the said item. The parties went to trial. After closing the evidence on the side of the petitioner herein, the first respondent filed an application in I.A.No.228 of 2015 to amend the plaint for the purpose of incorporating one item of property available for partition. The application was allowed by the learned trial Judge in spite of the objection raised by the petitioner. The said order is under challenge in the Civil Revision Petition at the instance of the respondents in I.A.No.228 of 2015.

3. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents.

4. The suit in O.S.No.40 of 2012 was filed by the petitioner herein before the trial Court praying for a decree of partition. The properties available for partition have already been included as items in the suit for partition. The first respondent in the written statement contended that one substantial item of property has not been included as an item in the suit for partition. According to the first respondent, it was a deliberate action on the part of the petitioner, inasmuch as if the said property was included as an item for partition, the trial Court would not have jurisdiction to entertain the suit.

5. The petitioner was examined as PW1. Thereafter he was

cross-examined. It was only after closing the evidence of the plaintiff, the first respondent has filed the application in I.A.No.228 of 2015. The learned trial Judge was of the view that one item of the property was omitted to be included and as such, the same should be included as an item for partition.

6. The written statement was filed as early as 14.09.2013. Nothing prevented the first respondent at the earliest point of time to include the left out property and to amend the plaint accordingly. It is true that in a suit for partition, even a defendant could be transposed as plaintiff. The moot question is as to whether the learned trial Judge was correct in allowing the application, during the fag end of the trial.

7. I am of the view that the learned trial Judge was not correct in permitting the first respondent to amend the plaint filed by the petitioner, after the commencement of trial. The learned trial Judge is directed to frame an issue as to whether the suit is bad for partial partition. The Court has to give a finding with regard to the said issue after giving reasonable opportunity to the petitioner and respondents.

8. In the result, the order dated 16.03.2016 is set aside. The Civil Revision Petition is disposed of with the above direction.

27.09.2016

ds

K.K.SASIDHARAN,J

ds

To:

The District and Sessions Judge
Coimbatore.

CRP (PD) No.1950 of 2016

27.09.2016