

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

CRP (PD) No.2386 of 2016
& CMP.No.12337 of 2016

A.Boopathi

.. Petitioner

Vs.

1.Saradha
2.S.Maheswari
3.P.Sumathi

.. Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to allow the Civil Revision Petition and set aside the fair and decretal order of the learned I Additional District Munsif, Erode, dated 06.10.2015 in I.A.No.1028 of 2015 in O.S.No.374 of 2013.

For Petitioner : Mr.T.M.Hariharan
For Respondents : Mrs.Karthika Ashok [for R1]

ORDER

The Civil Revision Petition is directed against the order dated 06.10.2015 in I.A.No.1028 of 2015 in O.S.No.374 of 2013, dismissing the application filed for amendment of the plaint to incorporate a survey number.

2. Heard the learned counsel appearing for the petitioner and the learned counsel for the first respondent.

3. The petitioner filed a suit in O.S.No.374 of 2013 before the learned I Additional District Munsif Court, Erode, praying for a decree of declaration with respect to the property in Old S.F.No.124 R.S.No.258/4 Natham Survey No.258/4B of 46 Pudur Village, Erode District. In the plaint, and more particularly in Paragraph No.4, the petitioner very specifically stated that the property is a joint family property in RS.No.258/4, which was partitioned orally among the legal heirs of Kuppusamy Gounder. The partition was effected on 15.09.1990.

4. The suit was contested by the respondents by filing written statement. The learned trial Judge framed issues. The parties have adduced evidence. The respondents cross-examined PW1 and PW2. There was a specific answer given by PW2 that the property in question was not the subject matter of oral partition. It was only thereafter, the petitioner has filed an application for amendment.

5. The learned trial Judge allowed the amendment with respect to the name of the predecessor in interest of the petitioner. However, the prayer with regard to the amendment of survey number was negatived on the ground that it would introduce a new case, which was not projected earlier.

6. The petitioner in Paragraph No.4 of the plaint has taken a consistent stand that only the property in RS.No.258/4, which was partitioned on 15.09.1990. After the conclusion of evidence on the side of the plaintiff, the petitioner has come up with a case that oral partition was also in respect to the property in RS.No.258/2 also.

7. In case, the amendment is allowed, it would go to the root of the matter. The respondents should be given an opportunity to file additional statement. The Court has to frame additional issue and evidence has to be taken once again. The petitioner for the reasons best known, failed to incorporate the necessary pleadings in the plaint, originally filed. It is too late to permit amendment of the plaint with respect to a survey number and that too after completion of evidence. The trial Court was perfectly correct in dismissing the petition.

In the upshot, I dismiss the Civil Revision Petition. No costs. Consequently, connected miscellaneous petition is also closed.

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Index : Yes/No

ds

K.K.SASIDHARAN, J.

ds

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