

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2016

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

CRP (PD) No.2626 of 2016
and CMP.No.13536 of 2016

1. Sukumar
2. Arumugam

... Petitioners

Versus

1. Vijaya
2. Bakkiam
3. Suguna

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and final order dated 07.04.2016 made in I.A.No.73 of 2016 in O.S.No.86 of 2014 on the file of the III Additional District Judge, Salem.

For Petitioners : Mr.B.Gopalakrishnan

ORDER

The first respondent filed a suit in O.S.No.86 of 2014 for partition against the petitioners and respondents 2 and 3. The suit was contested by the petitioners by filing written statement. The petitioners have taken up a contention that the first respondent was out of possession and as such, the Court fee paid was not correct. The Trial Court framed an issue with regard to payment of Court fee. Thereafter, the first respondent filed an application in I.A.No.73 of 2016 for amendment of the plaint to incorporate a plea with regard to joint possession. The application was allowed by the Trial Court. Feeling aggrieved, the petitioners are before this Court.

2. The application in I.A.No.73 of 2016 was filed by the first respondent with a grievance that her erstwhile counsel failed to incorporate the plea of the joint possession of the property and as such, the same has to be incorporated in the plaint. The learned trial Judge found that it was a bona fide omission on the part of the erstwhile counsel to mention about the joint possession and the application was filed even before the commencement of trial.

3. The petitioners have taken up a contention that in view of the issue framed with respect to payment of Court fee, the trial Court was not correct in allowing the application for amendment. I am not inclined to accept the contention for more than one reason.

3. The amendment application was filed even before the commencement of trial. The first respondent has given sufficient reasons in support of her plea that her erstwhile counsel failed to take up a contention with regard to joint possession. Even after amending the plaint, it is for the first respondent to prove that she is entitled to the property in question and that she has been in joint possession and enjoyment. The learned Judge considered the background facts and rightly allowed the application. I do not find any error or illegality in the order passed by the learned Trial Judge, warranting interference, by invoking the revisional jurisdiction under Article

227 of the Constitution of India.

4. In the result, the Civil Revision Petition is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

19.10.2016

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To

The III Additional District Judge,
Salem.

K.K.SASIDHARAN, J.

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