

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.314 of 2016
and C.M.P.No.1712 of 2016

Kaliappan

... Petitioner

Vs

1.Muthusamy
2.Palanisamy

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 10.10.2015 in I.A.No.657 of 2015 in O.S.No.262 of 2009 on the file of the Sub Court, Perundurai.

For Petitioner : Mr.S.Kaithamalai Kumaran

For Respondents : Mr.N.Manokaran

ORDER

Heard both sides. The suit is one for partition. The plaintiff's claim for partition and separate possession is resisted by the defendants among other grounds, on the ground of the suit being bad for partial partition. The plaintiff filed an application in I.A.No.657 of 2015 under Order VI Rule 17 and Section 151 of C.P.C. to amend the plaint so as to include the property which was omitted. According to the defence plea taken by the defendants, the respondents could have very well refrained from resisting the said petition, if at all, they wanted to have a quietus to the problem,

once for all. In case, the plaintiff comes forward with a petition seeking permission to withdraw the suit with leave to file a fresh suit in respect of the very same subject matter, on the ground that there is a technical defect of non-inclusion of one of the properties claimed by the other parties to be a common property. If such a plea is taken, then such plea cannot be resisted.

2. When the plaintiff has chosen to come forward with a petition, though belatedly, to include the property which was omitted to be shown as one of the suit properties, non-inclusion of which has been cited as a flaw in the suit by the contesting defendants, the Court below, ought to have allowed the said application, on terms as to cost for the delay caused. On the other hand, totally shutting the doors, which may eventually lead to the dismissal of the suit on the ground of partial partition shall not be correct. If the suit is liable to be dismissed on the ground of partial partition, then it has to be held that the plaintiff bound to fail on a technical ground, in which case leave has to be granted for filing a fresh suit on the same subject matter and also the omitted item of property. When that is so, nothing wrong in allowing the plaintiff to rectify the defect in this suit itself, thereby, the Court will avoid multiplicity of proceedings. However, since it is brought to the notice of the Court that the petition came to be filed belatedly, that too, when the suit stood for hearing arguments after both parties lead evidence, this Court deems it appropriate to direct the petitioner to compensate the respondent/plaintiff for such delay and at the same time, direct the trial Court to dispose of the suit within a time frame.

3. Accordingly, the revision petition is allowed. The order dated 10.10.2015 made in I.A.No.657 of 2015 is set aside. I.A.No.657 of 2015 shall stand allowed. The petitioner therein shall pay a sum of Rs.5,000/- as cost to the respondents therein. The cost will be paid and the amendment shall be carried out, within a week from the date of receipt of a copy of this order. Thereafter, time shall be given to the defendants to file additional written statement and after the filing of the additional written statement, the trial Court shall dispose of the suit before the end of June 2016. No costs. Consequently, connected Miscellaneous Petition is closed.

18.03.2016

Index : Yes/No
Internet : Yes/No

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To
The Sub Judge,
Perundurai.

P.R.SHIVAKUMAR, J.

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