

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **05.10.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.3155 of 2016 and
CMP.No.15989 of 2016

Thangavel

...Petitioner

versus

1.Velumani
2.Subbulakshmi
3.Ranganayaki

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order of the learned District Munsif of Udumalpet, dated 11.04.2016 in I.A.No.926 of 2015 in O.S.No.141 of 2006.

For Petitioner : Mr.J.Hariharan for
Mr.V.Nicholas

ORDER

The first respondent filed a suit for partition in O.S.No.141 of 2006. The petitioner, who is the first defendant in the said suit filed a written statement contending that the suit is bad for non-joinder of necessary party. The petitioner took a specific contention that his

mother is a necessary party for an effective adjudication of the matter. Subsequently, the mother of the petitioner died. The matter was taken up for evidence by the Trial Court. The first respondent at that point of time filed an application to amend the plaint for the purpose of incorporating certain details. The first respondent wanted to plead that her mother has executed certain documents in her favour and as such, mother was not impleaded as a party. The application was opposed by the petitioner. The learned Judge allowed the application. Feeling aggrieved, the petitioner has come up with this Civil Revision Petition.

2. The learned counsel for the petitioner contended that the petitioner has filed a written statement in November 2006. However, action was not taken by the first respondent to implead the mother as a party. It was only after commencement of trial and more particularly, after cross examining the witnesses on the side of the defendants, the first respondent filed an application to amend the plaint. According to the learned counsel, in view of the background facts, the learned Judge was not correct in allowing the application for amendment.

3. There is no dispute that the suit is one for partition. The petitioner has taken up a specific contention that the mother ought to have been made as a party and as such, the suit is bad for non-joinder of necessary party. It is true that the first respondent failed to take action to implead the mother as a party during her life time. It was only after posting the matter for evidence, the first respondent filed the application for amendment of the plaint.

4. The Trial Court has already framed an issue as to whether the suit is bad for non-joinder of parties. The Trial Court necessarily has to answer the said issue. It was only on account of the specific issue with regard to non-joinder of party that the first respondent filed an application after the life time of the mother indicating that the mother was not impleaded as a party, as she has already given her share by way of documents. It is for the first respondent to prove that the mother has given the property to her and as such, she was not impleaded as a party. Since there is an issue regarding non-joinder of necessary party, the learned Judge was correct in allowing the amendment. I am therefore of the view that the petitioner has not made out a case for interfering with the order passed by the Trial Court.

K.K.SASIDHARAN, J.

(svki)

5. In the up shot, I dismiss the Civil Revision Petition. It is open to the petitioner to file additional written statement. Since the plaint was amended after commencement of trial, necessarily, opportunity should be given to both sides to adduce further evidence. No costs. Consequently, connected miscellaneous petition is closed.

05.10.2016

Index:Yes/No

svki

To

The District Munsif Court, Udumalpet

C.R.P.(P.D.) No.3155 of 2016