

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2016

CORAM

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD.No.3815 of 2016
and C.M.P.No.19488 of 2016

1. Athilakshmi
2. Sarath Babu
3. Janaki
4. Devadoss
5. Selvaraj
6. Sekar

... Petitioners

Vs.

1. Krishnamoorthy
Balarama Pillai (died)
2. Anjali Devi

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal orders dated 30.06.2015 in I.A.No.213 of 2015 in O.S.No.39 of 2008 on the file of the Subordinate Court, Madurantakam.

For Petitioners: Mr.S.Muthiah

ORDER

The Civil Revision Petition has been preferred by the petitioners / plaintiffs challenging the amendment petition, which has been allowed in I.A.No.213 of 2015 in O.S.No.39 of 2008 on the file of the Subordinate Court, Madurantakam.

2. The amendment petition in I.A.No.213 of 2015 is taken out by the second defendant in a suit for partition to include the petition mentioned property in the schedule.

3. The said amendment petition was resisted by the respondents / defendants stating that the said property was purchased by Anjali Devi by utilising her jewels. Hence, it is her own absolute property and neither her father-in-law nor her husband had any right in the same.

4. The learned Subordinate Judge, after hearing both sides, had held that whether the property is a self acquired property of Anjali Devi or not, has to be decided only in the suit and the application cannot be dismissed on the ground that it is the separate property of the said Anjali Devi. The Court below further held that the plaintiffs have also not stated as to how they will be prejudiced, if the said amendment is allowed. Therefore, the application was allowed. Aggrieved by the same, the plaintiffs have preferred the above Civil Revision Petition.

5. From the facts, it is seen that it is only one item of property, which was omitted to be included in the plaint, is now sought to be included in the plaint schedule. Being a suit for partition, no prejudice would be caused, if the property is added. The nature of the property as to whether the property is self acquired property or joint family property has to be decided only at the time of trial. So far as the amendment is concerned, it does not alter the basic structure of the suit because of the said amendment. In fact, it is found by the learned Judge that the plaintiffs have not taken such a ground. Admittedly, the amendment sought for is pre-trial amendment. Hence, the amendment was allowed and I do not find any reason to interfere with the same.

6. It is stated that the suit is ripe for trial. Hence, the learned Subordinate Judge, Madurantagam is directed to dispose of the suit as expeditiously as possible, however, on or before 31.03.2017.

7. With the above observation, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

05.12.2016

Index : Yes/No
srn

PUSHPA SATHYANARAYANA.J

srn

To

The Sub Court,
Madurantagam

C.R.P.PD.No.3815 of 2016
and C.M.P.No.19488 of 2016

05.12.2016