

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.2802 of 2013

and M.P.No.1 of 2013

Venkatachalapathi

... Petitioner

Vs

1. Sellamuthu Gounder

2. Kandasamy

3. Jeyasenthilkumar

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 25.09.2012 made in I.A.No.757 of 2012 in O.S.No.80 of 2008 on the file of the District Munsif Court, Kangeyam.

For Petitioner : Mr.N.Manokaran

For Respondents 2 and 3: Mr.D.Krishnakumar

For Respondent-1 : No Appearance

ORDER

The arguments advanced on both sides are heard.

2. The plaintiff in the original Suit is the petitioner in this Civil Revision Petition. The first respondent / first defendant is none other than the father of the petitioner / plaintiff. The second and third respondents / second and third defendants are third parties claiming that the suit property is the joint family property of himself and his father, namely, the first respondent / first defendant and contending that the respondents 2 and 3 / defendants 2 and 3 were attempting to trespass into the property and put up a barbed wire fence, the petitioner chose to file the original suit O.S.No.80 of 2008 on the file of the District Munsif, Kangeyam for a permanent injunction against the respondents 2 and 3 not to interfere with the joint possession and enjoyment of the petitioner / plaintiff in respect of the suit property.

3. Contending that during the pendency of the suit the respondents 2 and 3 / defendants 2 and 3 emerged successful in fencing the property, the plaint was amended and a prayer for mandatory injunction directing the respondents 2 and 3 / defendants 2 and 3 to remove the fence was included. When the suit stood listed for trial, the petitioner / plaintiff once again filed an application in I.A.No.757 of 2012 under Order VI Rule 17 C.P.C for amending the

plaint praying for the relief of partition and separate possession. The said application was resisted by the respondents 2 and 3 / defendants 2 and 3 on the basis of their contention that the proposed amendment would change the very nature of the suit.

4. The learned trial Judge, after hearing both sides, sustained the objections raised by the respondents 2 and 3 / defendants 2 and 3 and dismissed the application for amendment. The said order of the trial Court dated 25.09.2012 is challenged in this revision.

5. The learned trial Judge, on a clear understanding of the nature of the prayer made in the original plaint and the plaint after amendment including the prayer for mandatory injunction, came to the conclusion that the present prayer for amendment made by the petitioner / plaintiff was nothing but an attempt to prolong the case as long as possible by changing the very nature of the case. The learned trial Judge has also assigned elaborate reasons for holding that the petitioner / plaintiff shall not be entitled to seek the permission to amend the plaint to include the prayer for partition and separate possession. In the original plaint, the petitioner herein / plaintiff contended that the suit property was the joint family property of

himself and his father, namely, the first respondent / first defendant and he was having an undivided interest in the suit property. The nature of prayer made therein, namely in the original plaint, will show that the relief of injunction was sought for not only for his benefit, but also for the benefit of the other co-sharers, if any.

6. The said prayer is being resisted by the respondents 2 and 3 on the premise that a part of the suit property came to be purchased by the third respondent / third defendant in a Court auction sale. Under the said circumstances alone, the petitioner / plaintiff has chosen to file the petition for amendment to include a prayer for partition and separate possession of the entire suit property. By such amendment, he claims only 2/9 share in the entire suit property. He has not stated either in the application seeking amendment or in the proposed amendment as to who is entitled to the remaining 7/9 share. In addition, he has not stated whether any other co-sharer or co-owner is left out. The said aspects were taken into consideration by the learned trial Judge to arrive at a conclusion that the attempt made by the petitioner / plaintiff was nothing but an attempt to prolong the case as long as possible.

7. This Court does not find any defect or error or illegality in the order passed by the trial Court capable of being corrected by this Court in exercise of its power of revision or power of superintendence under Article 227 of the Constitution of India. The trial Court's order dismissing the application for amendment on the ground that the proposed amendment would change the nature of the suit itself and that the amendment is not *bona fide* cannot be interfered with by this Court under Article 227 of the Constitution of India. There is no merit in the revision and the revision deserves dismissal.

8. In the result, the revision fails and the same is dismissed. The trial Court shall expedite the trial and dispose of the suit as early as possible and in any event, not later than six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

15.03.2016

Index: Yes/No

Internet: Yes/No

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To

The District Munsif Court, Kangeyam.

P.R.SHIVAKUMAR, J

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