

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.791 of 2016

&

C.M.P.No.4381 of 2016

P.M.Sadananda

... Petitioner

VS.

1.S.Choodamani

2.M.Thangavel

3.S.Janaki

4.R.Kamala

5.N.Jeevamani

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 02.02.2016 made in I.A.No.948 of 2015 in O.S.No.180 of 2011 on the file of the Sub-Court, Perundurai.

For Petitioner : Mr.T.Murugamanickam

ORDER

Defendant No.2 in O.S.No.180 of 2011 on the file of the Sub-Court, Perundurai is the petitioner in the revision. The first respondent

herein filed the above said suit against the petitioner and the respondents 2 to 5 for partition claiming a share equal to that of her brothers on the basis of her claim that the suit property was the separate property of her father Manickam, who died intestate in 2003. Except the petitioner herein/second defendant, others are not contesting the suit.

2. The petitioner / second defendant contends that the family of Manickam was a trading family having a business in Karnataka and with the income derived from such family business, the property in question came to be purchased and that hence, the first respondent/plaintiff is not entitled to a share equal to that of a son of Manickam. In the light of the said contention, the first respondent/plaintiff filed an application, of course, in the part-heard stage, in I.A.No.948 of 2015 to amend the plaint contending that the extent of the property was not correctly stated in the original plaint and that as per the revenue records, extent of the property comprises more extent, namely 9 cents more than the extent stated in the original plaint. The petition was resisted not by the other defendants, but by the petitioner herein/second defendant alone only on the ground of belatedness.

3. The learned trial Judge, after hearing both sides, came to the conclusion that the contention of the first respondent/plaintiff that the availability of a larger extent in the very same survey number within the very same boundaries was the property of her father Manickam and in the plaint, the said extent was not correctly stated and thus held the first respondent/plaintiff to be entitled to a permission to amend the plaint. As against the said order of the trial Court dated 02.02.2016 allowing I.A.No.948 of 2015, the present Civil Revision Petition has been filed.

4. The Respondent No.1, who alone is the contesting respondent, has entered appearance through counsel. The submissions made on both sides are heard. The materials produced before this Court are also perused.

5. The proposed amendment does not change the character of the claim made by the first respondent/plaintiff. The suit property was defined in the original plaint itself with reference to its Survey Number and also boundaries. But while noting the extent of the property, the first respondent herein/plaintiff noted the extent as per the document. But since the first respondent/plaintiff came across the revenue entries

showing a larger extent within the said boundaries and comprised in the same survey number, the necessity arose for her to correctly mention the extent available as per the revenue records. If at all the excess extent is not claimed to be a property separate from the property regarding which the suit has been filed, the petitioner cannot have any valid defence to resist the prayer for amendment. A perusal of the copy of the written statement will show that the petitioner/second defendant does not claim that the excess extent now sought to be included by way of amendment is a separate item. The only valid ground on which the petitioner/second defendant can resist the application for amendment is belatedness. Order VI Rule 17 CPC says that an amendment of the pleading could not be allowed after the trial commenced, if the Court is of the view that the person seeking amendment could have made such a plea earlier, had he acted with due diligence. Here is a case in which the first respondent/plaintiff filed the suit relying on the extent noted in the title deed. However, the property was defined with boundaries and Survey Number. When Survey Number and boundaries have been provided and extent also has been provided, in case of inconsistency, the boundaries will prevail over the extent. The contention of the first respondent/plaintiff that she came to know that a larger extent has been noted in the revenue

records only subsequent to the opening of the trial has not been seriously disputed. Moreover, the above said embargo will be applicable in cases of proposed amendment falling under the first part of the main provision of Rule 17 under Order VI CPC. The later part of the said rule will not attract the embargo provided in the proviso. The later part of the main provision of Rule 17 says that all amendments, which are necessary to identify the issues properly, are to be allowed by the Court.

6. Here, the proposed amendment will no doubt fall under the second category, namely amendments contemplated under the later part of the main provision of Rule 17 under Order 6 of the Code of Civil Procedure. Hence, the order of the trial Court dated 02.02.2016 allowing the proposed amendment cannot be said to have been passed either without jurisdiction or exceeding the jurisdiction conferred on the trial Court or in a manifestly erroneous manner which would result in miscarriage of justice warranting interference by this Court in exercise of power of superintendence over the subordinate Courts under Article 227 of the Constitution of India. There is no merit in the revision and the revision does not even merit admission and the same deserves dismissal at the threshold.

Accordingly, the Civil Revision Petition is dismissed. If the amendment has already been carried out, the petitioner/second defendant shall be given further time for filing additional written statement and thereafter further trial shall be proceeded with. No costs. Consequently, the connected miscellaneous petition is closed.

11.03.2016

Index: Yes/No
Internet: yes/No
gpa

To

The Sub-Court
Perundurai.

P.R.SHIVAKUMAR.J.,

gpa

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