



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P (MD) No.46 of 2016

and

C.M.P. (MD) .No.211 of 2016

N.Alagu

... Petitioner/Petitioner/
1st Defendant

Vs.

1.Mayniyappan

... 1st Respondent/1st Respondent/
Plaintiff

2.Manikkam

3.Elangovan

4.Panjavarnam

5.Subulakshmi

6.Pominathan

7.Sasikumar

8.Mrurugesan

9.Kayalvizhi

... Respondents/ Respondents 2 to 9/
Respondents 2 to 9

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order daetd 23.11.2015 and made in I.A.No.5 of 2013 in O.S.No.27 of 2010 on the file of the learned Additional District Judge, Pudukkottai.

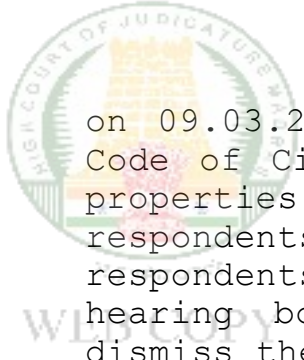
For Petitioner : Mr.N.Balakrishnan

For R1 : Mr.K.Balasundaram

ORDER

This revision petition is directed against the fair and decretal order dated 23.11.2015 and made in I.A.No.5 of 2013 in O.S.No.27 of 2010 on the file of the learned Additional District Judge, Pudukkottai.

2. The revision petitioner herein is the first defendant in the suit in O.S.No.27 of 2010, whereas the first respondent herein is the plaintiff. The remaining respondents viz., 2 to 9 are the defendants 2 to 9 in the suit. Virtually, the above said suit in O.S.No.27 of 2010 seems to have been filed by the first respondent ~~for the purpose of the suit~~. In that suit, the defendants 1 to 4 have filed their respective written statements. At this stage, the first defendant has come forward with an application in I.A.No.5 of 2013



on 09.03.2010 to amend the plaint under Order 6 Rule 17 of the Code of Civil Procedure for the purpose of inclusion of certain properties which is said to have been stand in the name of the respondents 1,2 and 3. This petition was resisted by the respondents by filing their respective counter statements. After hearing both sides the learned trial Judge has proceeded to dismiss the application on the following two grounds;

"1.that the petitioner has not taken any such plea in the written statement that the suit is made for partial partition.

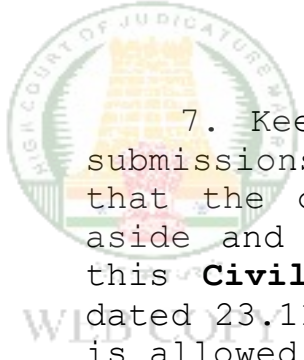
2.despite the suit was filed as early as in the year 2010, this application is filed belatedly for the inclusion of certain properties, which are said to have been stood in the name of the respondents 1,2 and 3 which is absolutely not sustainable in law and therefore he did not find any reason to allow this petition."

3. Challenging the correctness of this order, the petitioner being the first defendant has approached this Court with this revision petition.

4. Heard Mr.N.Balakrishnan, learned counsel appearing for the petitioner and Mr.K.Balasundaram, learned counsel appearing for the first respondent.

5. Mr.N.Balakrishnan, learned counsel has stated that the properties stands in the name of the respondents 1,2 and 3 have been purposely omitted to be included in the list of properties and that those properties stand in the name of the respondents 1,2 and 3. They are also joint family properties and they must be placed before the Court for partition. Otherwise, the suit would be vitiated for partial partition. But Mr.K.Balasundaram, learned counsel for R1, while advancing his argument has invited the attention of the Court to para no.2 of the affidavit filed by the petitioner in support of his claim. In para no.2 of the affidavit, the petitioner has not stated that the property stand in the name of the respondents 1,2 and 3 are also the joint family property.

6. But Mr.N.Balakrishnan has fairly admitted that the omission of mentioning of those properties, which stand in the name of the defendants 1,2 and 3 are also the joint family properties and unless and until those properties are included in the suit for placing before the Court for partition, the petitioner would be put into great loss and hardship. He has also submitted that the revision petitioner/first defendant, will take the risk of proving the fact that those properties are also joint family properties, and if he fails to prove the fact, then he is ready to admit the loss on his side.



7. Keeping in view of the above fact, after considering the submissions made by both the learned counsels, this Court finds that the order of the learned trial Judge is liable to be set aside and the revision is liable to be allowed and accordingly, this **Civil Revision Petition is allowed** and the impugned order dated 23.11.2015 is set aside and the petition in I.A.No.5 of 2013 is allowed on the following terms and conditions;

"1.the revision petitioner being the first defendant takes the burden of proving the fact that the properties stand in the name of the respondents 1, 2 and 3 are also joint family properties.

2. the learned trial Judge is directed to dispose of the suit as expeditiously as possible preferably within the end of 31st March,2016. It is to be noted that already there is a direction given by this Court, to dispose of the suit within a period of four months, which would expire on 15.02.2015. However, the learned Additional District Judge, Pudukkottai, is further directed to dispose of the suit in O.S.No.27 of 2010 by the end of 31st March, 2016 after amending the plaint as per law."

No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (C.O.DEPT.)I/C

/True Copy/

Sub Assistant Registrar

To

The Additional District Judge,
Pudukkottai.

+ 1 CC TO M/S.N.BALAKRISHNAN, ADVOCATE IN SR NO. 5160
+ 1 CC TO M/S.K.BAALASUNDHARAN, ADVOCATE IN SR NO. 5404

PJL

TE/SK-SKN/ : 01/03/2016 : 3P/4C

C.R.P (MD) No.46 of 2016

and

C.M.P. (MD) .No.211 of 2016

28.01.2016