

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2017

CORAM

THE HONOURABLE Ms. JUSTICE V.M.VELUMANI

CRP (PD) No.1632 of 2017
and CMP.No.7709 of 2017

1.K.J.Krishnamirtham
2.K.K.Rajagopal
3.K.K.Mohanakrishnan
4.K.K.Amsavalli
5.K.K.Kesavan
6.K.K.Vijayaraghavan
7.K.K.Geetha
8.C.Kannammal
9.A.Kalavathi

.. Petitioners

Vs

1.K.B.Shanmugasundaram
2.K.B.Parthasarathi
3.K.B.Perumal
4.K.B.Devaraja
5.K.B.Soundararajan
6.K.Vijayalakshmi

.. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 23.12.2016 made in I.A.No.484 of 2016 in O.S.No.177 of 2013 on the file of the learned II Additional District Court, Erode by allowing this Civil Revision Petition.

For Petitioners : Mr.N.Manokaran

ORDER

The Civil Revision Petition has been filed against the fair and decretal order dated 23.12.2016 made in I.A.No.484 of 2016 in

O.S.No.177 of 2013 on the file of the learned II Additional District Court, Erode.

2. The petitioners are the plaintiffs and the respondents are the defendants in O.S.No.177 of 2013 on the file of the District Judge, Erode. The plaintiffs have filed the suit for partition (a) directing the respondents to divide the suit property into 63 equal shares and to allot 13 such consequential shares to the plaintiffs; (b) for separate possession of the allotted shares; and (c) to direct the respondents to pay the plaintiffs the cost of the suit. The respondents have filed the written statement on 12.12.2013 and are contesting the suit. The issues were framed and the suit is pending for trial. At that stage, the petitioners have filed an application in I.A.No.484 of 2016 (i) to amend the name of the eighth petitioner; (ii) to amend the name of the wife of the first petitioner (iii) to direct the respondents not to alienate the suit property and (iv) to direct the respondents to deposit the rent amount into the Court arising from the suit property.

3. It is submitted by the learned counsel for the petitioners that after filing of written statement by the respondents, the petitioners came to know that the name of the eighth petitioner and the name of the wife of the first petitioner has been wrongly

mentioned in the plaint. According to the petitioners, in the legalheirship certificate, the name of the eighth petitioner is mentioned as "Rathinam"and the wife of the first petitioner name has been mentioned as "Venkatakrishnammal (alias) Venkatakrishnaveni". Hence, the petitioners have filed the application in I.A.No.484 of 2016 under Order 6 Rule 17 and Section 151 of CPC praying to amend the name of the eighth petitioner as "Rathinam alias Kannammal" and the name of the wife of the first petitioner as "Krishnaveni @ Venkatakrishnammal" respectively, which according to them, is only for the purpose of clarification in the plaint and to avoid multiplicity of litigation in the suit. It is also contended by the petitioners that the respondents are trying to alienate the suit property and collecting rents out of the suit property and not paying the rental shares to the petitioners. Hence, according to the petitioners, the plaint has to be amended and the relief sought for in the application in I.A.No.484 of 2016 in O.S.No. 177 of 2013 on the file of the II Additinal District Court, Erode have to be considered.

4. The respondents have filed counter opposing the application in I.A.No.484 of 2016 filed by the petitioners and also denied the averments stated by the petitioners that they are collecting rents in the suit property. It is also contended in the

counter that the application is filed at a belated stage.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on records, dismissed the application holding that the petitioners have not filed legalheirship certificate before the Court to substantiate their case to amend the name of the eighth petitioner/eighth plaintiff and the name of the wife of the first petitioner/first plaintiff and with regard to payment of Court fee, the petitioners have not sought for amendment in court fee column, for the additional prayer sought to be included. Hence, the proposed amendment prayed by the petitioners in I.A.No.2129 of 2015, was not granted by the trial Judge and the said application was dismissed vide order of the trial Court dated 23.12.2016.

6. Against the order of dismissal dated 23.12.2016, the present civil revision petition is filed by the petitioners.

7. The learned counsel appearing for the petitioners submitted that in the suit for partition, the plaintiffs have to be treated as the defendants and also vice-versa. According to the petitioners, the amendment of the names of the eighth petitioner and the wife of the first petitioner, was sought only for the purpose

of clarification and to avoid multiplicity of litigations. As far as payment of Court fee is concerned, the said question will arise only after amendment is ordered to include the additional prayer. It is submitted that the petitioners are willing to pay the necessary Court fee. These contentions are without merits. Since, the petitioners have come out with the prayer seeking amendment of names of the eighth petitioner and wife of the first petitioner, based on the legalheirship certificate, it holds that the legalheirship certificates are necessary documents to substantiate the claim of the petitioners seeking amendment. Moreover, it appears that the petitioners have not filed a copy of the legalheirship certificate either before the trial Court or before this Court. Further, when the plaintiffs seek an additional relief to amend the plaint by including the prayer, then the plaintiffs have to pay the additional Court fee for the same. The said amendment would be considered only when the plaintiffs make an undertaking to pay the additional Court fee before the Court, and without the said undertaking, no Court fee can be accepted. It is no doubt true that the Court fee is payable, if amendment is ordered. But necessary amendments are to be incorporated in the plaint while seeking inclusion of additional relief. The contention of the learned counsel for the petitioners is contrary to the above facts. The learned trial Judge has rightly considered these facts and dismissed the application. There is no illegality or irregularity in

the order dated 23.12.2016 passed by the learned II Additional District Judge, Erode, warranting interference by this Court.

8. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

05.06.2017

ds

Speaking Order/Non-speaking Order
Index : Yes / No

To:

The II Additional District Judge,
Erode.

V.M.VELUMANI,J

ds

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