

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28.06.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.257 of 2014

1.Kannammal
2.C.Manoharan
3.C.Senguttuvan
4.C.Vinodha : Petitioners

versus

1.Murugesu Moopar
2.Murugayee
3.Kalyani : Respondents

PRAYER: Revision filed against the order dated 14.9.2013 in I.A.No.142 of 2013 in O.S.No.87 of 2011 on the file of the Principal District Judge, Krishnagiri.

For petitioners :: Mr.S.N.J.Hariharan,
for M/s.V.Nicholas

For respondents :: Mr.C.Samivel,
for M/s.N.Sureka

ORDER

The respondents, in a suit for partition, filed an application for amendment, for the purpose of including "B" Schedule property to the plaint. The application was opposed by the petitioners by filing counter wherein a contention was taken that the properties shown in plaint "B" schedule have already been sold by their predecessor-in-interest as per Exs.A-9 to A-15. The learned Trial Judge allowed the application. The order is under challenge in this civil revision petition.

2. The learned counsel for the petitioners contended that the respondents have not produced any document to show that they have right in the property shown in plaint B Schedule. Such being the factual position, the Trial Court was not correct in allowing the application.

3. I have also heard the learned counsel for the respondent.

4. The suit in O.S.No.87 of 2011 was filed by the petitioners for partition. In the said suit, the respondents filed application in I.A.No.142 of 2011 for amendment of the plaint schedule and to incorporate B schedule to the plaint. In the counter affidavit filed by the petitioners they have not taken up any contention that the respondents are not having any share in respect of the property shown in B Schedule. The only objection taken by the petitioners appears to be that their predecessor-in-interest have already assigned the property to third party. Since there was no contention taken by the petitioners with regard to the right claimed by the respondents in respect of the property shown in B Schedule, the Trial Court was correct in allowing the application. It is for the respondents to plead and prove that plaint B Schedule is also available for partition.

5. The question whether the properties shown in plaint B schedule are available for partition and as to whether the respondents have got any

right in the said property are all matters to be adjudicated by the Trial Court on merits. I am therefore of the view that the order does not call for interference.

6. The petitioners are given liberty to file additional pleadings taking into account the amendment made in the plaint.

7. In the upshot, I dismiss the civil revision petition. No costs. Consequently, M.P.No.1 of 2014 is also dismissed.

28.06.2017

Index:Yes/no
tar

To
The Principal District Judge, Krishnagiri.

K.K.SASIDHARAN, J.

(tar)

C.R.P.(P.D.) No.257 of 2014

28.06.2017

<http://www.judis.nic.in>