

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CRP.(PD)No.4547 of 2015
and M.P.No.1 of 2015

K.Kalisamy @ Ganesamoorthi ... Petitioner

Vs.

1. K.Ponnusamy

2. Logeshwari

3. K.Ramasamy

4. Subbulakshmi

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 10.07.2015 made in I.A.No.317 of 2013 in O.S.No.203 of 2009 on the file of the District Munsif Court, Avinashi.

For Petitioner : Mr.J.Franklin

For R1 and R2 : Mr.A.Muthukumar

For R3 & R4 : No appearance
ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 10.07.2015 made in I.A.No.317 of 2013 in O.S.No.203 of 2009 on the file of the District Munsif Court, Avinashi.

2. Heard the learned counsel for the petitioner as well the respondents 1 and 2 and perused the materials on record.

3. The petitioner is plaintiff and respondents are defendants in O.S.No.203 of 2009 on the file of the District Munsif Court, Avinashi. The petitioner filed suit for partition. The respondents filed written statement and are contesting the suit. Trial commenced. The petitioner filed proof affidavit and examined in chief. When the suit is posted for cross-examination of P.W.1, the respondents 1 and 2 filed I.A.No.317 of 2013 under Order VI Rule 17 C.P.C., to amend the plaint to include all the properties mentioned in the application, for partition.

4. According to the respondents 1 and 2, the properties now

sought to be included were purchased in the names of petitioner and third respondent and these properties are also joint family properties. The fourth respondent relinquished all her rights in the suit property and other properties.

5. The petitioner filed counter affidavit and opposed the said application on the ground that the properties standing in his name are self acquired properties purchased out of his own income. He also denied that fourth respondent relinquished all her rights in the joint family property.

6. The learned Judge considering the averments made in the affidavit, counter affidavit and judgment reported in 2013 (1) TNCJ 216 (Mad) (Rani and another v. Chandra and others), allowed the application.

7. It is well settled that in a suit for partition, all the properties liable to be partitioned must be included in the schedule of the suit property. Both the plaintiff and defendant can bring it to the notice of the Court the properties left out to be included in the suit for partition. The Court has power to include such property at

any stage of the suit.

8. In the present case, the petitioner is opposing the amendment application to include the properties mentioned by the respondents 1 and 2 on the ground that they are not joint family property. But it is his separate property purchased by him out of his own fund and income. It is for the petitioner to prove that the properties are not purchased out of joint family income and purchased out of his self earning and out of his income.

9. The learned counsel for the respondents 1 and 2 relied on the judgment of this Court reported in **2010 (4) CTC 331 (A.A.Ganga and another v. A.R.Usha and others)**, wherein it has been held as follows:

"4. In the above Suit, trial commenced and on the side of the Plaintiffs, two witnesses were examined and evidence was closed on both sides and the case was posted for arguments on 04.09.2008 and at that time, the Revision Petitioners herein filed I.A.No.114 of 2008 to include some properties, which according to them also belongs to the joint family of the Plaintiffs and the Defendants 1 to 9 and stated that during cross-

examination, PW1 admitted that Late A.S.Athmacharan, the husband of the 8th Defendant was a partner in M/s Sarathi Textiles situate at Door No.9 East Veli Street, Mission Hospital Compound, Madurai and Exs.A5 to A8 also reveal that Sarathi Textiles show Room situate in Door No. 163, South Masi Street, Madurai, belongs to M/s.Sarathi Textiles and her husband was having a share and her husband has not retired from the Partnership Firm and no accounts were settled and therefore, those properties must also be included in the Suit for partition. The Plaintiffs, namely the Respondents 1 and 2 herein disputed the claim of the Revision Petitioners stating that the assets of Partnership Firm viz., Sarathi Textiles and Venkateswara Chem Dyes were settled among the partners and the husband of the 8th Defendant viz., A.S.Athmacharan retired from the Partnership Firm and therefore, they are not entitled to any share in those properties and they are the exclusive properties of the Plaintiffs and the other Defendants 1 to 7 also supported the case of the Plaintiffs/Respondents 1 and 2."

10. The above judgment is squarely applicable to the facts and circumstances of the present case. Similarly, it is for the

respondents 1 and 2 to prove that the fourth respondent relinquished all her rights in the joint family property. In view of the well settled judicial pronouncement in respect of inclusion of the properties in the suit for partition, I hold that there is no irregularity or illegality warranting interference by this Court with the order of the learned Judge dated 10.07.2015.

11. In the result, the Civil Revision Petition is dismissed. As the suit is of the year 2009, the learned District Munsif, Avinashi, is directed to dispose the suit in O.S.No.203 of 2009 as expeditiously as possible in any event not later than four months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

सत्यमेव जयते

25.10.2017

Index : Yes/No
kj/msrm

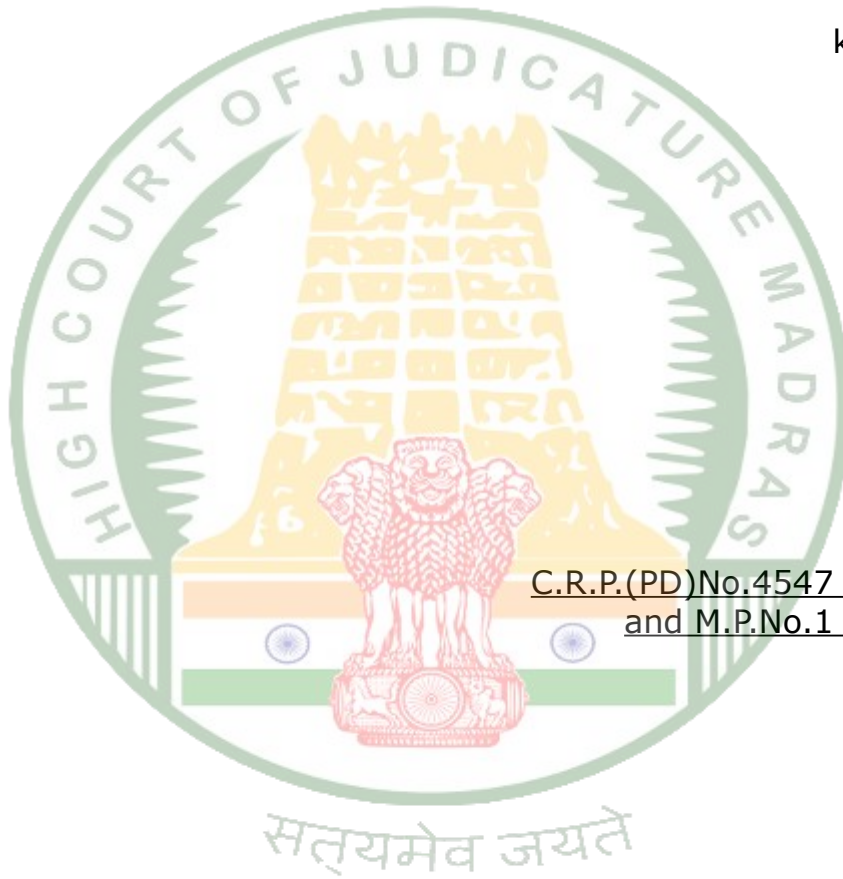
To

The District Munsif,
Avinashi

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V.M.VELUMANI, J.

kj/msrm



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