

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2017

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.(PD) Nos.529 of 2015 and 789 of 2014
and M.P.No.1 of 2014 and M.P.No.1 of 2015

1. P.Ramani
2. P.Devakumar
3. S.Sathya
4. A.Kavitha
5. J.Tamil Selvi
6. B.Shanthi .. Petitioner in both C.R.Ps

Versus

1. S.Lalitha
2. S.Srinivasan
3. S.Suresh Babu
4. S.Magesh Gandhi
5. B.Kaushalya
6. Gnanambal
7. P.G.Panneerselvam
8. Viswanathan
9. S.Baskaran
- 10.K.Sumathi
- 11.D.Selvi
- 12.D.V.Natarajan .. Respondents in C.R.P.No.529 of 2015

1. S.Lalitha

2. S.Srinivasan
3. S.Suresh Babu
4. S.Magesh Gandhi
5. B.Kaushalya
6. Gnanambal .. Respondents in C.R.P.No.789 of 2014

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India against the order and decretal order passed in I.A.Nos.130 and 131 of 2012 in O.S.No.39 of 2012 passed by the Principal District Judge, Vellore.

For Petitioner in both C.R.Ps :Mr.P.Sankaranarayanan
For Respondents in both C.R.Ps : No Appearance

COMMON ORDER

The plaintiffs in a suit for partition are the revision petitioners challenging the orders refusing to implead the proposed parties and to include certain left out properties in the plaint.

2. The petitioners/plaintiffs have stated that the suit was filed in the year 2012 and immediately thereafter, they had made enquiries with respect to another property that was left out. The petitioners subsequently came to know that several survey numbers

of land have been omitted to be added in the schedule properties in the plaint. The non- inclusion of those properties was neither willful nor wanton. But, they did not have knowledge about the same at the relevant point of time. Immediately, the application in I.A.No.131 of 2012 was filed for including properties that were left out. The suit was filed on 19.06.2012 and the affidavit and petition to amend the plaint was filed on 04.10.2012 to include certain left out properties. Even before the written statement could be filed, the plaintiffs have filed the said application. But the learned trial Judge had dismissed the same stating that it would cause injustice to the other side and the amendment is not necessary for determining the real question in issue. Another reason for dismissing the said application is that the trial had already commenced. Aggrieved by the same, the C.R.P.(P.D).No.789 of 2014 has been filed.

4. The learned counsel for the petitioners states that the trial has not yet commenced and in fact, this Court was pleased to

grant interim stay in C.R.P.(P.D)No.529 of 2015. The plaintiffs are now seeking only to include the properties, which are inadvertently omitted to be included at the time of filing of the plaint. If the amendment is not allowed, there will not be complete adjudication, as the suit is one for partition. Reasoning of the trial Judge is absolutely misconceived, as inclusion of the properties to the plaint schedule, will not in any way prejudice the defendants. The question of delay or commencement of trial also will not arise, as the amendment application was filed even before the written statement filed by the defendants. Therefore, in the interest of justice, the amendment has to be allowed.

5. C.R.P.(P.D) No. 529 of 2015 relates to impleading the subsequent purchasers as defendants 7 to 12 in the above said suit. The said application in I.A.No.130 of 2012 was dismissed for the reason that the petitioners have not stated as to what are the properties sold to the proposed respondents. The suit being one for partition, if there are subsequent alienees, without making them a

party to the suit, if the suit is decided, it will be prejudicial to the purchasers also. The adjudication may be complete only if the necessary parties are before the Court. The plaintiffs being *dominus litis* and the suit being one for partition, no prejudice would be caused to the defendants, if the proposed parties are also impleaded as parties to the proceedings. If the suit for partition is proceeded with, without adding the purchasers, who have now got interest in the properties, it will seriously prejudice the parties.

6. With the above observations, the orders passed by the learned Principal District Judge are set aside and the Civil Revision Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

srn

19.01.2017

PUSHPA SATHYANARAYANA.J

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To

The Principal District Judge,

Vellore.

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and M.P.No.1 of 2014 and M.P.No.1 of 2015

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