

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **14.06.2017**

CORAM:

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

C.R.P.(P.D.) No.1918 of 2013
and M.P.No.1 of 2013

1.Raghu
2.Suguna

...Petitioners

Vs

1.Jayasundari
2.Sai
3.Soundarajan

...Respondents

Prayer:- Civil Revision Petition filed Under Article 227 of Constitution of India to set aside the order and decretal order dated 26.06.2013 made in I.A.No.19 of 2012 in A.S.No.36 of 2011, on the file of I Additional District & Sessions Judge Cuddalore.

For Petitioners : Mrs.G.Sumitra
for Mr.I.Abrar Mohamed Abdullah

For Respondents : Mr.R.Muralidharan

ORDER

The petitioners filed a suit for partition and obtained a preliminary decree. Since the suit was not decreed as prayed for, the petitioners filed first appeal in A.S.No.36 of 2011 before the I Additional District Court, Cuddalore.

2. Before the first Appellate Court, the petitioners filed an application in I.A.No.19 of 2012 for amendment. It was filed essentially to make certain changes in the description of property. There was also a prayer to add one item of the property available for partition.

3. The application was opposed by the respondents on the ground that in case the amendment is permitted, it would change the nature and cause of action.

4. The learned trial Judge dismissed the application on the ground that in case the amendment is allowed, it would cause irreparable hardship to the respondents. The order is under challenge in this Civil Revision Petition.

5. I have heard the learned counsel for the petitioners and learned counsel for the respondents.

6. There is no dispute that the suit in question is a comprehensive suit for partition. The decree passed by the trial Court was challenged by the petitioners in A.S.No.36 of 2011. During the currency of the first appeal, the petitioners filed application in I.A.No.19 of 2012, seeking amendment of the description of property shown in the schedule and also to include another item of property for partition. The trial Court was expected to consider as to whether there was due diligence on the part of the petitioners in filing the

application after trial and more particularly, during the currency of the appeal. The trial Court, by way of a very brief order, dismissed the application with a simple observation that it would cause irreparable hardship to the respondents. The amendment was not only in respect of a new property, but it was also an application to amend the description of the property. The trial Court failed to consider the fact that in case this application is not allowed, the petitioners have to file an application before the Executing Court after passing final decree. After hearing the learned counsel for the parties, I am of the view that the matter requires fresh consideration by the learned District Judge.

7. In the result, the order dated 26 February 2013 is set aside. The application in I.A.No.19 of 2012 is restored to file. The petitioners are given liberty to file a better affidavit to demonstrate that they have taken due diligence. The respondents should also be given opportunity to submit their response.

8. The learned trial Judge is directed to consider the matter in the light of the additional pleadings and decide the issue on merits and as per law. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

K.K.SASIDHARAN,J.

dna/gms

The Civil Revision Petition is allowed as indicated above. No costs.
Consequently, connected miscellaneous petition is closed.

14.06.2017

gms/dna

To

The I Additional District & Sessions Court,
Cuddalore.

C.R.P.(P.D.) No.1918 of 2013

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