

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.No.2402 of 2012
& M.P.No.1 of 2012

1.Chitira
2.Kalaivanan
3.Mathivanan (Minor)
4.Kalaimathi (Minor) Petitioners/Plaintiffs

Both minors rep. By their
Mother and Natural Guardian Mrs.Chitira

Vs.

1.Chellammal
2.Balakujammal
3.Saraswathi
4.Kala
5.Koteeswari
6.Rajammal (Deceased)
7.Perumal
8.Anbalagan

R7 recorded as LR's of the deceased R6
vide order of the Court dated 27.08.2013
made in M.P.No.1/2013 in
C.R.P(PD) .No.2402 of 2012 Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the
Constitution of India, to call for the records relating to the
fair and decreetal order dated 16.11.2011 made in
I.A.No.213/2011 in O.S.No.22/2009 on the file of the Sub
Court, Cheyyar.

For Petitioners : Mr.T.Sathiyamoorthy
For R7 : Mr.K.G.Senthil Kumar
For Respondents 1 to 5, 8 : No Appearance
For R6 : Died

ORDER

This Civil Revision Petition has been filed to call for
the records relating to the fair and decreetal order dated
16.11.2011 made in I.A.No.213/2011 in O.S.No.22/2009 on the
file of the Sub Court, Cheyyar and to set aside the same.

2. The petitioners are the plaintiffs, respondents are defendants in O.S.No.22/2009 on the file of the Sub Court, Cheyyar. The petitioners filed suit for partition, separate possession of the 14/45th share in the Schedule mentioned properties, mesne profits of the suit properties and for permanent injunction, restraining the respondents from alienating or encumbering the suit property. Pending suit, the petitioners filed I.A.No.213/2011 for amendment of the plaint by including one more property for partition.

3. According to the petitioners, the father in law of the first petitioner purchased the property by the sale deed dated 26.10.1998 and petitioners also have shares in the said property. By mistake, the said property was not included at the time of filing the suit. Therefore, they sought for amendment. The respondents opposed the said application by filing counter affidavit on 10.08.2011 and stated that the petitioners must prove their case that the said property was purchased by one Kanniyappa Gounder, father-in-law of the first petitioner, as alleged by the petitioners. The said property is an ancestral property. The said Kanniyappa Gounder did not purchase any property and hence, the respondents prayed for dismissal of the application.

4. The learned Judge dismissed the application on the ground that the petitioners not only seek amendment to include the property for partition, but also seek amendment of Item Nos. 2 to 8 and has not given any details in the affidavit for inclusion of the said Items.

5. Against that order dated 16.11.2011 made in I.A.No.213/2011 in O.S.No.22/2009, the present civil revision petition has been filed by the petitioners.

6. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the 7th respondent. There is no representation on behalf of the respondents 1 to 5. The 6th respondent died. Though notice was served on 8th respondent and his name is printed in the cause list, there is no representation either by person or through counsel.

7. The petitioners are seeking for amendment to include one more property in which the petitioners claim 14/45th share. According to the petitioners, the said property by mistake was not included when the suit was filed. It is well settled that in a suit for partition, party can amend the plaint at any stage to include the property which was left out at the time of filing of the suit. Even the defendant is entitled to bring to the notice of the Court, the properties which are liable to be partitioned. The amendment with regard to the Item Nos. 2 to 8 are only consequential amendments with regard to valuation of the property to be included as Item No.1. The petitioners are seeking such amendment in view of inclusion of additional property which includes the valuation of the property.

8. The learned Judge failed to see that the amendment sought for in Item Nos.2 to 8 are only consequential amendments with regard to the valuation and committed irregularity in dismissing the application on the ground that the petitioners have not given any reason for amendment of Item Nos. 2 to 8. In view of the same, the impugned order of the learned Judge is set aside.

9. In the result, the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

gsa

To

The Subordinate Judge,
Cheyyar.

+1cc to Mr.K.G.Senthil Kumar, Advocate, S.R.No.57311
+1cc to Mr.T.Sathiyamoorthy, Advocate, S.R.No.51071

C.R.P.No.2402 of 2012
&
M.P.No.1 of 2012

NM(CO)
CA(07/08/2017)

सत्यमेव जयते

WEB COPY