

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.88 of 2009
& M.P.No.1 of 2009

1.S.Semala Devi
2.S.Mahalakshmi
3.A.Dhanalakshmi

.. Petitioners

Vs.

1.S.Rangaraj
2.S.Sundararaj
3.S.Kamaraj

.. Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decretal order dated 08.12.2008 made in I.A.No.8 of 2008 in A.S.No.35 of 2006 on the file of District Court, Thiruvannamalai.

For Petitioner : Mr.P.Veenaswesh
for T.R.Rajaraman

For R1 : Mr.G.Rajan

For R2 & R3 : No Appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 08.12.2008 made in I.A.No.8 of 2008 in A.S.No.35 of 2006 on the file of District Court, Thiruvannamalai.

2. The petitioners are the respondents 1,4 & 5, first respondent is the petitioner and respondents 2 & 3 are the respondents 2 & 3 in I.A.No.8 of 2008 on the file of the District Court, Tiruvannamalai. The first respondent herein filed suit in O.S.No.369 of 2001 on the file of the Principal Subordinate Court, Tiruvannamalai, for partition against the petitioners and respondents 2 and 3. In the said suit, the first respondent stated that the B Schedule properties are ancestral properties in the hands of father of the parties Samikannuraj. After trial, the suit was decreed by the judgment and decree dated 31.06.2005. Against the said judgement and decree, the petitioners and respondents 2 and 3 filed A.S.No.35 of 2006. Pending first appeal, the first respondent filed I.A.No.8 of 2008 for amendment of the plaint to the effect that the B Schedule properties are self acquired properties of his father Samikannuraj as per the partition deed dated 07.11.1968, instead of the said properties mentioned as ancestral properties in the hands of father.

3. The petitioners and respondents 2 and 3 resisted the said application on the ground that by such amendment, the first

respondent is introducing a new cause of action and new case. The first respondent has not filed any appeal and therefore, he is not entitled to file any application for amendment in the appeal filed by the petitioners and respondents 2 and 3.

4. The learned Judge, considering the averments made in the affidavit, counter affidavit and materials available on record, allowed the application on the ground that the first respondent has made necessary averments with regard to partition deed dated 07.11.1968 and amendment now sought for is in the nature of clarification and by amendment, no new cause of action or new case is introduced. Both the parties are claiming share based on the partition deed dated 07.11.1968 and petitioners can defend their case with regard to fraction of the share they are entitled to as per law.

5. Against the order dated 08.12.2008 made in I.A.No.8 of 2008, the present civil revision petition is filed by the petitioners.

6. The learned counsel appearing for the petitioners reiterated the averments in the counter affidavit and grounds of revision and

submitted that the first respondent has come out with the specific case in the plaint that B Schedule Property is ancestral Property of their father Samikannuraj and by way of amendment, the first respondent is seeking to change the character of the suit property as "self acquired property" of Samikannuraj. This Changes the entire character of the suit and is introducing a new case. By amendment, in view of Section 6 of Hindu Succession Act, the parties have acquired specific share in the suit property which are ancestral property and by amendment their share in the property is reduced. The learned counsel for the petitioner relied on the Judgment reported in **(2011) 9 Supreme Court Cases 788 (Ganduri Koteswaramma and Another Vs. Chakiri Yanadi and Another)** and the paragraph 12 of the said judgment is extracted hereunder:

"12. The right accrued to a daughter in the property of a joint Hindu family governed by the Mitakshara law, by virtue of the 2005 Amendment Act, is absolute, except in the circumstances provided in the proviso appended to sub-section (1) of section 6. The excepted categories to which new Section 6 of the 1956 Act is not applicable are two, namely, (i) where the disposition or alienation

including any partition has taken place before 20.12.2004; and (ii) where testamentary disposition of property has been made before 20.12.2004. Sub-section (5) of Section 6 leaves no room for doubt as it provides that this section shall not apply to the partition which has been effected before 20.12.2004. For the purposes of new Section 6 it is explained that "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 or partition effected by a decree of a Court. In light of a clear provision contained in the Explanation appended to sub-section (5) of Section 6, for determining the non-applicability of the section, what is relevant is to find out whether the partition has been effected before 20.12.2004 by deed of partition duly registered under the Registration Act, 1908 or by a decree of a court. In the backdrop of the above legal position with reference to Section 6 brought in the 1956 Act by the 2005 Amendment Act, the question that we have to answer is as to whether the preliminary decree passed by the trial court on 19.03.1999 and amended on 27.09.2003 deprives the appellants of the

benefits of the 2005 Amendment Act although final decree for partition has not yet been passed."

and the learned counsel for the petitioner further contended that in the appeal stage, he is not entitled to seek amendment.

7. The learned counsel for the respondents submitted that the first respondent is not introducing a new cause of action or new case but amendment is only for clarification to the effect that the suit properties are self acquired properties of their father Samikannuraj as per the partition deed dated 07.11.1968 and it is not an ancestral property. Except the said averment, no amendment is sought for introducing any new fresh case.

8. Heard learned counsel for the petitioners and first respondent and perused the materials available on record.

9. From the materials available on record, it is seen that the first respondent sought for partition on the ground that the suit properties are ancestral properties in the hands of their father Samikannuraj. Now, the first respondent has filed an application for

amendment to the effect that the B Schedule Property is self acquired property of their father, Samikannuraj as per the partition deed dated 07.11.1968. Except, this averments the first respondent is not adding any further averments to substantiate his claim. Based on the averments already made in the plaint and by interpretation of partition deed dated 07.11.1968, the first respondent is seeking amendment. This will not change the character of the suit and will not introduce any new case. The share of the parties will depend upon the interpretation of the partition deed dated 07.11.1968 given by the learned First Appellate Judge. In view of the same the judgment relied by the learned counsel for the petitioners is not applicable to the facts of the present case.

10. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes/No
dm/gsa

11.09.2017

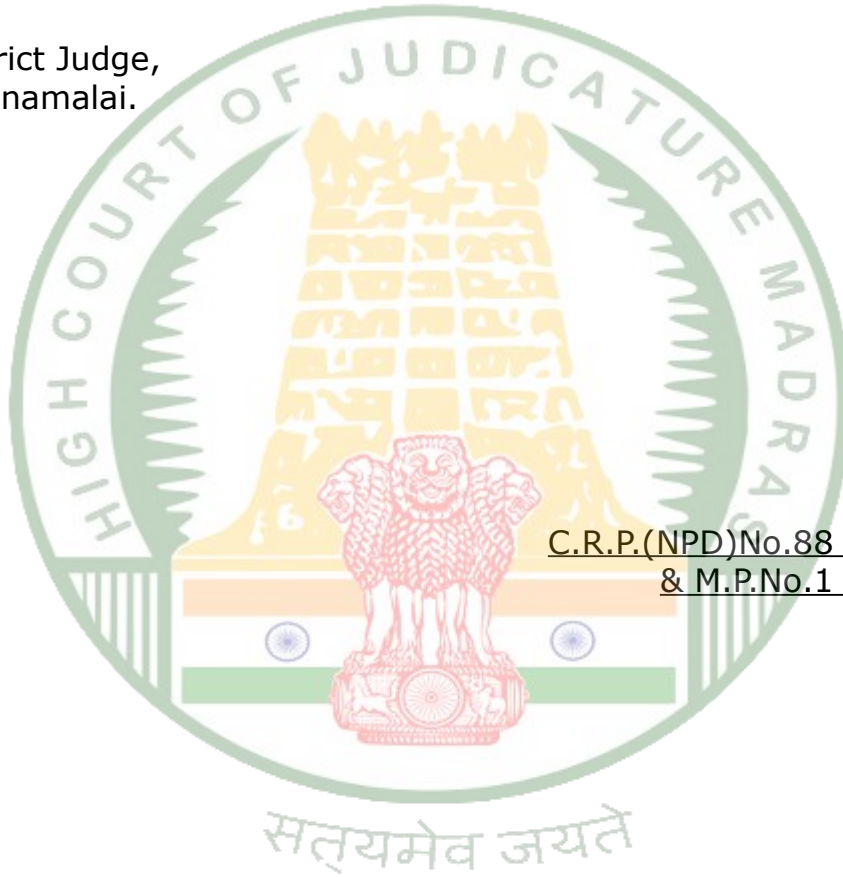
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V.M.VELUMANI, J.

dm/gsa

To

The District Judge,
Thiruvannamalai.



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