

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)Nos.606 and 607 of 2012
and
M.P.No.1 of 2012**

Deivasigamani .. Petitioner in both the CRPs

Vs.

1.Chinnasamy @ Narayanasamy
2.Palaniammal
3.Mani @ Sivagami
4.Minor Viknesh
5.Minor Naveen
(Minors are rep. by their mother/next
friend Mani @ Sivagami)
6.Ramathal
7.Minor Shyamala
(Minor rep. by her mother / next
friend Ramathal)

8.C.K.Patteswaran ..8th Respondent in CRP.607/2012

Common Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decretal order dated 02.01.2012 made in I.A.Nos.1028 and 1029 of 2011 in O.S.No.186 of 2003, on the file of the District Munsif-cum-Judicial Magistrate, Perundurai.

(In both the CRPs)

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.A.K.Kumarasamy (for R1)

COMMON ORDER

C.R.P.No.606 of 2012 is filed by the petitioner/1st defendant as against the order and decree made in I.A.No.1028 of 2011 in O.S.No.186 of 2003 dated 02.01.2012, on the file of the learned District Munsif cum Judicial Magistrate, Perundurai.

2.C.R.P.No.607 of 2012 is filed by the petitioner/1st defendant as against the order and decree made in I.A.No.1029 of 2011 in O.S.No.186 of 2003 dated 02.01.2012, on the file of the learned District Munsif cum Judicial Magistrate, Perundurai.

3.As both the Civil Revision Petitions are arising out of the same suit and therefore, the above Civil Revision Petitions are disposed by this common order.

4.I heard Mr.N.Manokaran, learned counsel for the petitioner and Mr.A.K.Kumarasamy, learned counsel for the 1st respondent in both the

Civil Revision Petition and perused the entire materials available on record.

5. In a suit for partition filed by the plaintiff/1st respondent herein, two interlocutory applications are filed, one in I.A.No.1028 of 2011 under Order 6, Rule 17 of CPC to amend the plaint and another I.A.No.1029 of 2011 under Order 1, Rule 10 (2) of CPC to implead the proposed 11th defendant in the suit.

6. The reason for amendment stated by the plaintiff is that in the written statement filed by the 1st defendant, it is stated that a house property in Natham Poramboke is not included in the suit schedule property. Hence the above Natham property is not included in the suit, the suit will be dismissed for partial partition, therefore the above amendment application was filed.

7. The other impleading application was filed by the plaintiff seeking to implead the 11th defendant in the suit as the 1st defendant stated in the written statement that the 11th defendant is also one of the co-sharers. Unless the 11th defendant is impleaded in the suit, the

suit will be dismissed on the ground of non joinder of necessary parties.

8.The trial Court by considering the averments and counter averments of the parties, come to the conclusion that by amending the plaint by including Natham Poramboke property the character of the suit will not be changed. Further by impleading the 11th defendant who is said to be one of the co-sharer of the parties, no prejudice will be caused to the defendants. The said finding of the Trial Court is perfectly correct and legally also sustainable. The arguments advanced by the learned counsel for the revision petitioner that by way of this amendment the entire nature and the character of the suit would be changed cannot be countenanced for the reason that the present amendment and impleading application emerged only because of the averments made in the written statement of the revision petitioner. Hence, I do not find any infirmity or irregularity over the impugned orders challenged in these civil revision petitions, accordingly both the civil revision petition are dismissed.

9.In the result:

(a) both the Civil Revision Petitions are dismissed by confirming

the order dated 02.01.2012 made in I.A.Nos.1028 and 1029 of 2011 in O.S.No.186 of 2003, on the file of the District Munsif-cum-Judicial Magistrate, Perundurai;

(b) the Trial Court is directed to take steps to carryout the amendment and after that the trial Court is directed to dispose the suit within a period of two months from the date of receipt of a copy of this order, since the suit is pending for a period of more than nine years. No costs. Consequently, connected miscellaneous petition is closed.

28.02.2017

vs

Note:Issue order copy on 19.02.2019

Internet:Yes

Index:Yes

To

The District Munsif-cum-Judicial Magistrate,
Perundurai.

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M.V.MURALIDARAN, J.

VS



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