



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2017

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP (NPD) (MD) Nos.618 and 619 of 2017

and

CMP (MD) No.2773 of 2017

- 1) S.Anand
- 2) S.Dinesh
- 3) S.Ganesh

... Petitioner in both CRPs

vs.

- 1) S.Sekar
- 2) C.Subbulakshmi
- 3) C.Indirani
- 4) C.Ilakkiyamani
- 5) C.Ilamathi
- 6) C.Indumathi
- 7) V.Raja
- 8) R.Marakkamalai
- 9) M.Jothi Meena
- 10) Vasanthi

... Respondents in both CRPs

Petitions filed under Article 227 of Constitution of India, against the order and decretal order dated 19.12.2016 made in I.A.Nos.500 and 499 of 2016 in O.S.No.204 of 2012 on the file of the District Munsif cum Judicial Magistrate, Bodinaickkanur.

For Petitioner : Mr.K.Guhan
For R9 & R10/Caveators : Mr.S.Kadarkarai

COMMON ORDER

The applications to amend the prayer in the suit from declaration to partition and to re-open the plaintiffs side evidence were rejected by the Trial Court, since the applications were taken out after 3½ years from the date of filing the suit.

2. Aggrieved by that, the plaintiffs/revision petitioners have filed the instant revision petitions, stating that in the pleadings though the plaintiffs have narrated the entire facts and cause of action, there was an error in the relief part. Hence, the suit for declaration challenging the alienation made by the 1st defendant in favour of the defendants 7, 9 and 10 by sale deed of the year 1992 has to be amended as suit for partition.



3.The counsel for the respondents submitted that when the trial was taken up and DW1 was in the witness box, the present amendment petition was filed. The written statement was filed by the defendants in the month of February 2013 and thereafter, the plaintiffs have taken out an application to implead some of the defendants. Even at that point of time, the plaintiffs did not consider or thought fit to amend the prayer. But, only after the examination of the defendants, they have come out with this application which is not only a belated application barred by limitation, but also the entirely different cause of action contrary to the present suit. Therefore, there is no error in the dismissal of the application for amendment filed by the revision petitioner.

4.The impugned order vividly narrates about the nature of the case and the application to amend the prayer. The Trial Court has pointed out that the suit is laid and the cause of action stated in the plaint and the prayer originally sought by the plaintiff if amended as pleaded in the present petition, it will be quite contrary to the pleadings and cause of action and therefore, such an application cannot be entertained at the belated stage, more particularly, when the issues were settled and parties have been particularly examined.

5.This Court concurs with the view expressed by the lower Court. Hence, CRP(MD)No.618/17 is dismissed. Consequently, CRP (MD)No.619/17 is also dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar

To

The District Munsif cum Judicial Magistrate,
Bodinaickkanur.

+2cc to M/S.K.Guhan. Advocate SR.No.17245,17246

+1cc to M/S.S.Kadarkarai, Advocate SR.No.17414

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