

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.04.2018

Coram: The Honourable Mr. Justice N. SESHASAYEE

**C.R.P(NPD)No.1431 of 2011
and
M.P.No.1 of 2011**

1. A.Settu
2. Rajavel
3. Soundararajan
4. Dhanasingh
5. Ramalingam
6. K.Settu
7. Rajamani
8. Thangarasu
9. Arumugham
10. Kasilingam
11. Ranganathan

...Petitioners

Versus

1. Kuppusami
2. Sundaramurthy
3. Saroja
4. Saragapani
5. Arikrishnan
6. Vaidyanathan
7. Sundaravel
8. Parasuraman
9. Kathirvel
10. Poongodi
11. Ananthanayaki
12. Gnananandamurthy @ Kesavamurthy
13. Arivazhagi
14. Mathiazhagi
15. C.Muthuraman
16. C.Murugan
17. C.Packiaraj
18. C.Gomathi
19. Rasathi

20. Jatachithra
 21. S.Ambujam
 22. S.Jyothilingam
 23. S.Tamilselvam
 24. Rukmini
 25. Poonkodi
 26. Thilakavathi
 27. Malarkodi
 28. Gunasundari

...Respondents

Prayer : This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure against the fair and the decreetal orders dated 15.02.2011 passed in I.A.No.44 of 2009 in I.A.No.9 of 2009 in A.S.No.33 of 2007 on the file of the Sub Court, Panruti.

For Petitioners : Mrs.Hema Sambath

For Respondent - 1 : Mr.S.K.Rakhunathan

Respondents 2 to 28 : Given Up

ORDER

The present Civil Revision Petition is filed by some of the respondents in A.S.No.33 of 2007 on the file of the Sub Court, Panruti, which itself has arisen from a decree dismissing the suit in O.S.No.119 of 2004 in which the present petitioners were party defendants.

2.1. The first respondent has laid the suit in O.S.No.119 of 2004 on the file of the District Munsif Court, Panruti for declaration of his title over the suit properties with an alternative prayer for partition. The plaintiff claims title to the property as a lineal descendant of a certain

that the suit was actually laid in the year 1992, that it was transferred and taken on file by the transferee Court in O.S.No.119 of 2004. On 23.08.2007, the suit was dismissed whereupon, the plaintiff has preferred A.S.No.33 of 2007. In this, plaintiff has filed I.A.No.9 of 2009.

2.2. The filing of the I.A.9/2009 was occasioned by the fact that in its judgment, the Trial Court has observed that the description of the property as given in the plaint is inadequate and it is to rectify this the plaintiff came forward with I.A.No.9 of 2009 for amending the memorandum of appeal. In this I.A, he has introduced as many as 61 items of properties, whereas the number of suit properties scheduled to in the plaint are 43 properties. During the pendency of this I.A.No.9 of 2009, plaintiff would file I.A.No.44 of 2009 for amending the description of the properties given in I.A.No.9 of 2009. Vide the impugned order of the first Appellate Court dated 15.02.2011, the aforementioned I.A.44 of 2009 was allowed. Aggrieved by the said order, the defendants have approached this Court with the present Revision Petition.

3. The learned counsel for the petitioners would argue that the agony of the defendants commenced when the plaintiff laid the suit in 1992 and the defendants have demonstrated before the Trial Court their independent title over the property over some of the items of

properties as well as those that they had obtained from Adhimoolam under whom, plaintiff too claims title. The Trial Court has considered that every aspect of the evidence made available before it and found the plaintiff was not even entitled for a decree of partition, which he has sought as an alternate relief, which implies that the Trial Court did not even find that the plaintiff has a fractional right over any of the suit properties. It is this decree that is in challenge before the First Appellate Court. Before the First Appellate Court, the plaintiff wanted to amend only the memorandum of appeal and not the plaint. Secondly amendment is sought for 61 items of properties whereas he has scheduled only 43 items of immovable properties in the plaint. He would now want to introduce another 18 items as additional properties. Now the petitioner wants to correct the description of even these properties and the amendment he has sought in I.A.No.44 of 2009 is as lengthy as its primary application for amendment in I.A.No.9 of 2009.

4. *Per contra*, the learned counsel for the respondents confined his arguments along line indicated in the amendment application. The Court need not seek proof of action sought to be amended and at any rate, I.A.No.9 of 2009 is still pending. The extreme scenario is the present order is only coming to make necessary corrections in I.A.No.9 of 2009.

5.1. *Prima facie*, the plaintiff is uncertain about his right or about the properties, in relation to which he attempts to build a cause for an action. Why he has added 18 items of properties now was not backed up adequately in his affidavit either. Even though, while considering a petition for amendment Court is not expected to seek proof of what is pleaded, in the context of the case, where the plaintiff has been non-suited, it is, but necessary for the Court to *prima facie* enter a finding as to the bonafide need for seeking an amendment. Secondly, when the suit is pending before the Trial Court for close to 16 years, nothing prevented the plaintiff to make such amendments as are available to him. Thirdly, the nature of remedy is also not cosmetic or correcting some inadvertent errors, but literally re-shapes the entire properties which implies the plaintiff's keen interest is to delay the judicial process.

5.2. On a careful consideration of the Order of the court below, it is seen that the first Appellate Court appears to have been guided by the general principle pertaining to amendment. However, in the context of the fact that there is an attempt to introduce at least 18 new items in the appeal memorandum which are not subject matter to the original suit, consideration in allowing the application requires not just the application of the first principles to the situation at hand but it also involves an element of bonafide on the part of the petitioner to seek amendment. Here the first respondent is found

wanting.

6. This Court therefore allows this Civil Revision Petition and set aside the order dated 15.02.2011 passed in I.A.No.44 of 2009 in I.A.No.9 of 2009 in A.S.No.33 of 2007 on the file of the Sub Court, Panruti and remanded it back to the Trial Court. The Sub Court, Rameshwaram thereafter would take both the I.As and consider a fresh need for disposing and pass such appropriate orders as are not necessary in the order which it has to be done. The first Appellate Court is also directed to dispose of the appeal on or before 31.08.2018. No costs. Consequently, connected Miscellaneous Petition is closed.

19.04.2018

mrr

Index : Yes / No

To

The Sub Court,
Panruti.

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N. SESHASAYEE, J.,

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