

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.04.2018

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(PD)No.4458 of 2017
and CMP.No.21038 of 2017

G.Kaliyamurthy ... Petitioner

Vs.

1.G.Natarajan
2.R.Shanthi
3.S.Rasathi
4.P.Selvi
5.V.Revathi
6.G.Munniyammal ... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair and Decretal order dated 18.04.2017 made in I.A.No.61 of 2017 in O.S.No.80 of 2011 on the file of the Principal District Munsif Court, Thirukovilur.

For Petitioner : Mr.K.Gangadaran

For R1 : Mr.C.Munusamy

For R2 to R5 : No Appearance

ORDER

This Civil Revision Petition has been filed to set aside the order passed by the learned Principal District Munsif Court, Thirukovilur in I.A.No.61 of 2017

in O.S.No.80 of 2011 dated 18.04.2017.

2. The plaintiff in O.S.No.80 of 2011 on the file of the Principal District Munsif cum II Additional District Munsif Court, Thirukovilur, are the revision petitioners herein.

3. According to the petitioner, the petitioner herein has filed the suit in O.S.No.80 of 2011 seeking partition. After completion of trial, the case was directed to be posted for arguments. The plaintiff filed an application on 09.01.2017 for amendment. After receiving the counter and hearing the arguments, the trial Court dismissed the application on the ground that there was a delay and laches. Aggrieved by the said order, the petitioner has filed the present civil revision petition before this Court.

4. The learned counsel for the petitioner would contend that the petitioner is the younger brother and the first respondent is the elder brother. He is looking after the family and also all the documents are in the custody of the first respondent. At the time of filing the suit, the petitioner was not aware of the documents. All the properties are ancestral properties. Now, the trial has been completed after recording of the evidence. The petitioner came to know that some of the properties were purchased in the name of the

first respondent and first respondent has filed the documents, in which, it is stated that some of the properties in “A” schedule is wrongly mentioned as it was purchased in the name of the first respondent and on verification of the survey and value of the properties, the petitioner seeks to amend the plaint. The trial Court has failed to consider the fact that the suit is for partition and all the documents were only in the custody of the first respondent. Therefore, the impugned order is liable to be set aside.

5. Heard the learned counsel for the petitioners and also perused the available records.

6. On a perusal of the records, it is not in dispute that the petitioner and respondents are brothers and sisters. The said suit is for partition. It is also not in dispute that the question raised in the suit whether the properties are jointly family properties? Similarly, all the documents are filed by the respondents and they were in the custody of the first respondent. After entering into box only, he has produced the documents. Therefore, it is necessary to give an opportunity to the petitioner to take a plea regarding genuineness of the documents. Under the circumstances, if the amendment application is allowed, no prejudice would be caused to the respondents.

Therefore, the order of the trial court warrants interference and the order passed by the trial court is liable to be set aside. After carrying out the necessary amendment in the plaint, the trial court is directed to give an opportunity to the respondents to file an additional written statement and to frame additional issue if any and permit to lead additional evidence.

7. In view of the above discussion, the order passed by the trial court in I.A.No.61 of 2017 in O.S.No.80 of 2011 dated 18.04.2017 is set aside. With the above direction, this civil revision petition is allowed. Consequently, the connected Miscellaneous petition is closed. No costs.

12.04.2018

Index:Yes/No

Internet : yes/No

Speaking order / Non speaking order

kkd

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P.VELMURUGAN,J.

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To

The Principal District Munsif Court,
Tirukovilur.



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