

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 31.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

C.R.P.No.1686 of 2015
and M.P.No.1 of 2015

1.Kolanchiammal
2.Jothi
3.Kodumalli
4.Aindhulatcham
5.Malar
6.Dhanam

... Petitioners/Plaintiffs

Vs.

1.Jaganathan
2.Aathiyappan
3.Aathimoorthi
4.Ganesh
5.Madhanagopal

... Respondents/Defendants

Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decreetal order of the learned Principal District Munsif, Ulundurpet, passed in I.A.No.722 of 2014 in O.S.No.329 of 2013 dated 20.08.2014.

For Petitioner : No Appearance

For Respondents : Mr.R.Venkatasubban
for M/s.Sarvahanuman Associates.

O R D E R

This Civil Revision Petition arises out of an order passed in an amendment application in a partition suit.

2. Partition suit is O.S.No.329 of 2013 on the file of 'Principal District Munsif Courts, Ulundurpet', which shall hereinafter be referred to as 'trial Court' for the sake of convenience and clarity.

3. Partition and separate possession post division by metes and bounds is sought for qua the estate of one Jeganathan, who is defendant No.1 as also father of six plaintiffs and defendant Nos.2 and 3.

4. To be noted, six plaintiffs, defendant Nos.2 and 3 are siblings. Six plaintiffs are sisters and defendant Nos.2 and 3 are brothers. Court is informed that defendant Nos.4 and 5 in the trial Court i.e., Ganesh and Madhanagopal, are persons in whose favour alienation of some of the properties was feared.

5. Plaint schedule reveals that four items of properties form subject matter of the suit in the trial Court.

6. Pending suit, six plaintiffs, arraying themselves as six petitioners, took out an interlocutory application in I.A.No.722 of 2014. This Interlocutory application was filed under Order VI Rule 17 of 'The Code of Civil Procedure, 1908', which shall hereinafter be referred to as 'C.P.C.' for the sake of brevity. This application shall henceforth be referred to as 'amendment application'. Vide the amendment application, two items of properties were sought to be added to the plaint schedule as item Nos.5 and 6. To be noted, as mentioned supra, there are already four items of properties in the plaint schedule.

7. Defendants, who were arrayed as respondents in the interlocutory application i.e., I.A.No.722 of 2014, entered appearance and contested the application.

8. Crux of the defense or opposition to the amendment application by the defendants was that two items of properties sought to be added to the plaint schedule, are not properties available for partition as part of Jeganathan's estate and that the said properties belong to Jeganathan's spouse one Lakshmiammal. In support of their contention, the defendants marked five documents in the amendment application. Five documents, according to the learned counsel for the respondents before this Court, includes title deeds of Lakshmiammal qua two items of properties, now sought to be added in the plaint schedule. The five documents have been marked as Exs.R1 to R5 in the amendment application.

9. After full contest in the aforesaid manner, the trial Court vide fair and decreetal order dated 20.08.2014, dismissed the amendment application.

10. Plaintiffs, complaining that they are aggrieved by such dismissal, has filed the instant revision under Article 227 of the Constitution of India.

11. Post notice in this revision, respondents, who are defendants in the trial Court, have entered appearance.

12. Today, when the revision is listed for hearing, there is no representation on behalf of the revision petitioners. However, Mr.R.Venkatasubban, learned counsel for M/s.Sarvabhauman Associates is before this Court on behalf of the respondents.

13. The learned counsel for the respondents very fairly submitted that the amendment can be permitted and a time frame can be fixed for disposal of the partition suit. In the light of the fair submission made by the learned counsel for the respondents, this Court deems it appropriate to examine the civil revision petition on merits.

14. On an examination of the Civil Revision petition on merits, it comes to light that the amendments sought to be made, for all practical purposes, are only inclusion of two items of properties in addition to four items already enumerated in the plaint schedule. Certain consequential and collateral amendments have also been sought for, which are not of any major consequence. As alluded to supra, the crux of the opposition of the defendants is that the two items of properties now sought to be included in the plaint schedule are not available for partition as (according to defendants) they are self acquired properties of Jeganathan's spouse Lakshmiammal. As mentioned supra, documents in this regard, has also been marked in the amendment application.

15. The suit in the trial Court, being a partition suit, as between siblings, for all practical purposes, is one where there would be no plaintiffs or defendants. To be noted with the exception of defendants 4 and 5, the other litigants are siblings. Obviously, defendant No.1 is also an exception, as he is the father, whose estate is sought to be partitioned.

16. Under such circumstances, in the light of the stand taken by the respondents it would be appropriate to allow the amendment that has been sought for by the plaintiffs, but with a caveat that all questions, with regard to the two items of properties sought to be included, are left open including the opposition and objection taken to the amendment application, which has already been raised by the defendants. In other words, disposal of the Civil Revision Petition will not come in

the way of the defendants raising the opposition/objection, which has already been raised in the amendment application i.e., interlocutory application for being considered in the trial in the main suit.

17. For the purpose of abundant clarity, it is restated that it is open to the defendants to take the plea that the two items of properties are not available for partition and that they belong to Jeganathan's spouse Lakshmiammal.

18. In the light of the fact that, it is a partition suit, primarily amongst siblings and that this revision arises out of an interlocutory application for amendment, more so, in the light of the fair stand taken by the respondents, the following order is passed:

a) The order, sought to be revised i.e., order dated 20.08.2014 made in I.A.No.722 of 2014 in O.S.No.329 of 2013, is set aside.

b) Plaintiffs shall carry out consequential and necessary amendments in the plaint within a fortnight from the date of receipt of a copy of this order.

c) Amended copies of plaint shall be served on the defendants within a fortnight therefrom and pleadings by way of additional written statement, if any, shall be completed in another 30 days therefrom.

d) The trial Court, after completion of pleadings in the aforesaid manner within the aforesaid time frame, shall dispose of the main suit i.e., O.S.No.329 of 2013 within three months therefrom.

19. This Civil Revision Petition is disposed of on above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

सत्यमेव जयते Assistant Registrar (CS-viii)

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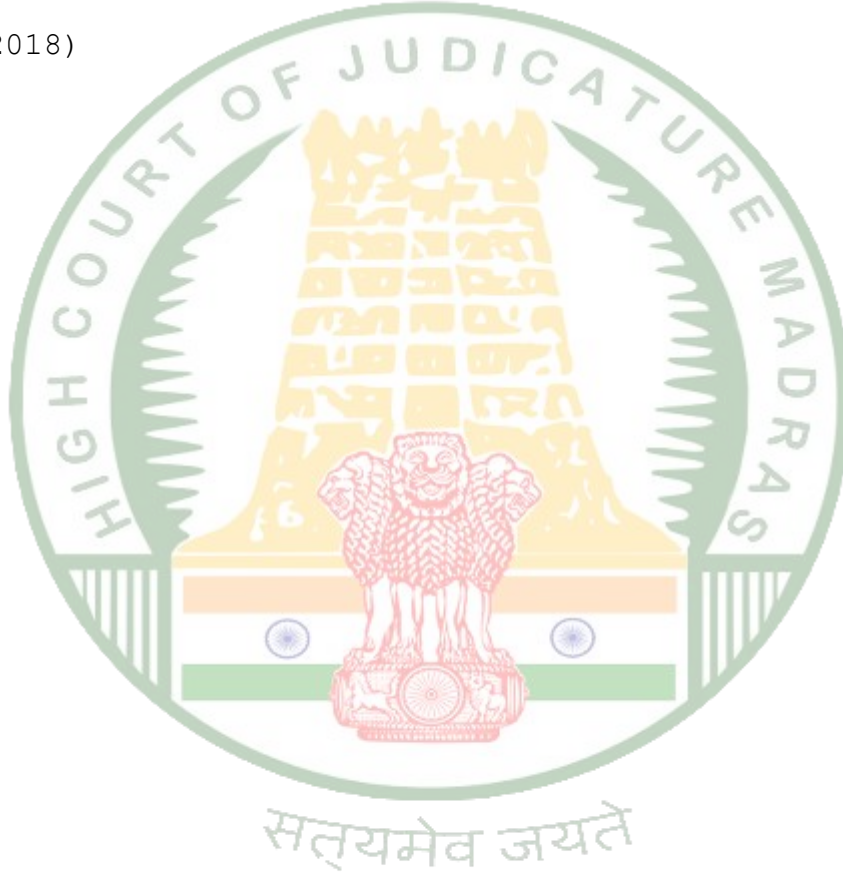
To

1. The Principal District Munsif Court, Ulundurpet.
2. The Section Officer, V.R. Section,
High Court, Madras.(2 copies)

+1cc to Mr.SARVABHAUMAN ASSO. Advocate, S.R.No.51953

C.R.P.No.1686 of 2015

SKV(CO)
TR(20/08/2018)



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