

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

C.R.P.(PD).No.464 of 2011
and
M.P.No.1 of 2011
and
M.P.No.1 of 2014

Sabitha

... Petitioner

Vs

1. Indraniammal
A.P.Janakiram(died)

2. A.P.Jayavel

3. A.P.Kumaresan alias Murugesan

4. Manimekalai

5. Vanaja

6. Kalaiselvi

7. Pavunammal

8. A.P.Prakasam

9. Inbamani

10. A.P.J.Veeramani

11. Ramadevi

12. Renuka Devi

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against Order dated 06.12.2010 in I.A.No.514 of 2010 in O.S.No.162 of 2005, on the file of the Additional District Munsif's Court, Vaniyambadi, Vellore District.

For Petitioner : Mr.R.Venkata Varathan

For Respondents 1 to 4 : Mr.P.A.Sudesh Kumar

ORDER

The case of the petitioner is that the petitioner as plaintiff had instituted a suit for partition in O.S.No.162 of 2005 on the file of District Munsif Court, Vaniyambadi. The trial in this case has commenced. At that time, the petitioner had filed I.A.No.514 of 2010 (a) seeking an amendment to the share she claimed and (b) seeking accounts for the income obtained from the suit properties and one upon its share in the said income.

2. The trial Court however has dismissed this petition on the ground that (a) the trial has commenced and the amendment, midway through the trial would not be permitted and (b) that the second defendant had died in the year 2002 and his legal representatives were brought on record, which implies the counsel for the petitioner could not be blamed for negligence or inadvertence.

3. The learned counsel for the petitioner submitted that originally the petitioner had claimed 1/32 share in the suit property, which she has now modified on the same set of pleadings to 1/8 share. So far as income is concerned, it was sought without introducing any new facts. In the affidavit

filed in support of this petition, it is averred that whatever that is now sought to be introduced by way of amendment was omitted to be asked because of the over sight of the counsel.

4. The learned counsel for the respondents submitted that determining the individual share to which parties as co-owners of the suit property are entitled to, is what the Court is required to do, and the power/duty of the Court to determine the same is not controlled by what the parties seek. This would mean that the amendment sought is quite unnecessary and a technique deployed by the revision petitioner to delay the trial. Further, so far as the trial of the suit goes, the plaintiff has examined herself as PW1 and the case stands posted for further evidence of the plaintiff.

5. While this Court finds merit in the submission of the learned counsel for the respondents, still by bringing on record the prayer as now sought to be introduced by way of amendment is not going to prejudice their rights either. In the said circumstances, this Court deems it appropriate to allow this Revision Petition.

6. Accordingly, this petition is allowed, the order in I.A.No.514 of 2010 in O.S.No.162 of 2005, on the file of the Additional District Munsif's Court, Vaniyambadi, is allowed, however, only on payment of cost of Rs.1,000/- (Rupees One Thousand Only) to be paid by the revision-petitioner

to all those respondents/defendants before the trial court who contest the suit. The petitioner is further directed to carryout necessary amendment and also file an amended copy of the plaint on the same day, whereupon the Trial court may grant the respondents/defendants an opportunity to file any additional pleadings, and to proceed with the trial. The trial court is directed to dispose of the suit on or before 29.09.2018. No costs. Consequently, connected miscellaneous petitions are closed.

04.04.2018

Index:Yes/No

ssn

To

The Additional District Munsif's Court,
Vaniyambadi, Vellore District.



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N.SESHASAYEE, J.,

ssn



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