

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.959 of 2015
and
M.P. No. 1 of 2015

Sajjan Philip
Represented by his power agent
Kumararaja

... Petitioner

Vs.

1. A.D.Poulose
2. Susammal Varghese

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 27.11.2014 made in I.A.No. 1126 of 2013 in O.S.No.750 of 2004 on the file of the District Munsif Court, Udumalpet.

For Petitioner : Mr.P.Ravishankar Rao
for Mr. L.Mouli

For Respondents : Mr.J.Hariharan
for Mr.V.Nicholas

ORDER

The Civil Revision petition is filed against the fair and decretal order dated 27.11.2014 made in I.A.No.1126 of 2013 in O.S.No.750 of 2004 on the file of the District Munsif Court, Udumalpet.

2. The petitioner is plaintiff and the respondents are the defendants in O.S.No.750 of 2004 on the file of the District Munsif Court, Udumalpet. The petitioner filed said suit for partition claiming 1/2 share in the suit property. The first respondent filed written statement on 14.02.2005 denying the right of the petitioner, which was adopted by the second respondent and are contesting the suit. The petitioner filed I.A.No.1126 of 2013 under Order VI Rule 17 C.P.C. to amend the prayer to include the relief of declaration that he is the absolute owner of the suit property.

3. According to the petitioner, his uncle purchased the property from and out of the amount given by the petitioner and his uncle admitted the same in document No.6/letter written by Abraham K.Philip to the petitioner. By not properly considering the said document, the petitioner has claimed partition and contended that unless mistake is rectified in the plaint, the petitioner will be

put to loss and hardship and prayed for amendment of the plaint.

4. The respondents filed counter affidavit and opposed the said application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit, averments made in the plaint and amendment now sought for by the petitioner, dismissed the application holding that the present plea of the petitioner is mutually destructive plea of earlier plea taken in the plaint by the petitioner.

6. Against the said order of dismissal dated 27.11.2014 made in I.A.No.1126 of 2013 in O.S.No.750 of 2004, the present Civil Revision Petition is filed by the petitioner/plaintiff.

7. From the materials available on record, it is seen that the petitioner has claimed partition and made averments to that effect. Now the petitioner by amendment is seeking declaration that he is absolute owner of the entire property. The learned Judge considering this fact, dismissed the application on the ground that the present relief now sought for by the petitioner is contrary to the

earlier plea taken by the petitioner in the plaint. In addition to that, by amendment, the petitioner is introducing new case. By amendment, new case or new cause of action cannot be introduced, which will change the entire character of the suit.

8. For the above reason, the Civil Revision Petition is dismissed as devoid of merits. As the suit is of the year 2004, the learned Judge is directed to dispose of the suit in O.S.No.750 of 2004 within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

19.01.2018

Index:Yes/No

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To

The District Munsif
Udumalpet.

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V.M.VELUMANI, J.

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