



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.04.2018

DELIVERED ON : 23.08.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.2732 of 2015

and

M.P. (MD) No.1 of 2015

1.N.Francis
2.N.Selvert
3.N.Pathrose
4.N.Vinu

.. Petitioners

vs

N.Shaji,
Rep. by his Power of Attorney Mary Sheeja

.. Respondent

Revision filed under Article 227 of Constitution of India against the order dated 17.03.2015 in I.A.No.886 of 2014 in O.S.No.284 of 2012 on the file of the I Additional District Munsif Court, Kuzhithurai.

For Petitioners : Mr.C.K.M.Appaji

For Respondent : Ms.J.Anandavalli

ORDER

This Civil Revision Petition is directed against the order dated 17.03.2015 passed in I.A.No.886 of 2014 in O.S.No.284 of 2012 on the file of the learned I Additional District Munsif Court, Kuzhithurai, allowing the petition for amendment, subject to payment of cost of Rs.1500/- on or before 23.03.2015, failing which the petition shall stand dismissed. The petitioners are defendants in the suit.

2. The plaintiff and defendants are brothers. The plaintiff has filed the suit for partition and separate possession.

3. Pending suit, the power agent of the plaintiff viz., V.S.Mary Sheeja has filed I.A.No.886 of 2014 under Order 6, Rule 17 of C.P.C. seeking to amend the plaint alleging that after filing of the suit, on 13.06.2013, the plaintiff had purchased one-third share of his father in the plaint schedule property and also effected mutation. He had also obtained patta for the



property. Thus, the plaintiff is entitled to 7.932 cents of land and one-third share in the building, which he purchased from his father and one-fifth share in the balance two-third share in the plaint schedule property. Hence, it is necessary to amend the plaint as detailed in the petition.

WEB COPY

4. Resisting the I.A.No.886 of 2014, the defendants filed counter stating that the vendor of the property viz., Nesaiyyan, was not a party to the suit and the said sale is invalid. It is stated that the trial of the suit has already commenced and at this stage, no amendment can be permitted. No convincing reason has been stated in the affidavit for amending the plaint and therefore, the same is liable to be dismissed.

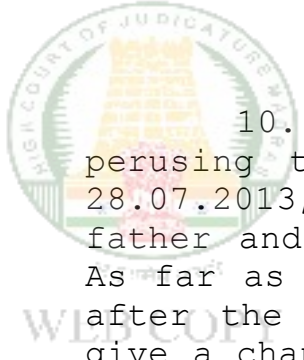
5. Upon consideration of the rival submissions, the trial Court allowed the petition in I.A.No.886 of 2014, subject to payment of cost of Rs.1500/-. Assailing the same, the defendants have filed this Civil Revision Petition.

6. I heard Mr.C.K.M.Appaji, learned counsel for the petitioners and Ms.J.Anandhavalli, learned counsel for the respondent and also perused the materials available on record.

7. The learned counsel for the defendants submitted that the trial Court erred in allowing the petition as the alleged sale dated 13.06.2013 took place during the pendency of the suit. Further, the trial Court failed to see that the sale deed dated 13.06.2013 was fictitious and no legality was attached thereto in view of the settled legal proposition that the coparcener of the property cannot convey his share in the property either by way of gift, sale, release or will unless metes and bounds were decided. He would submit that the vendor of the property has not been made as party in the suit and hence, the order of the trial Court is liable to be set aside.

8. Per contra, the learned counsel for the plaintiff submitted that the proposed amendment is no way alter the character of the suit and therefore, the trial Court was right in allowing the petition by permitting the plaintiff to amend the plaint. He would submit that there is no necessity to interfere with the order of the trial Court.

9. It appears that in the suit, P.W.1 was examined and Exs.P1 to P7 were marked. When the suit was posted for cross-examination of P.W.1, the plaintiff had filed the petition to amend the plaint alleging that pending suit, the plaintiff has purchased the property from his father and the same has to be brought on record by way of pleading. For that purpose, he filed



10. In its order, the trial Court stated that while perusing the deposition of P.W.1, after filing of the suit on 28.07.2013, the plaintiff had purchased the property from his father and the sale deed was also marked as exhibit in the suit. As far as the sale deed was concerned, since the sale took place after the suit, the Court feels that it would be appropriate to give a chance to the plaintiff to prove his case. The trial Court observed that since the suit is for partition and in order to give an opportunity to the parties to prove their case and if the amendment is allowed, no prejudice would be caused to the defendants and also for proper adjudication of the suit, the amendment sought for by the plaintiff can be permitted. However, for the delay in filing the amendment petition, the defendants have to be compensated. The aforesaid reasoning arrived at by the trial Court is acceptable.

11. It is settled that amendment could be allowed even in post trial stage. Even delayed amendment could be allowed if it is not inconsistent, nor prejudicially affecting the defendant.

12. Nothing has been produced to show that if the amendment was permitted, the defendants would be prejudicially affected. On the other hand, it is seen that the proposed amendment was not introducing totally a new and inconsistent plea substantially affecting the interest of the defendants.

13. It appears that the amendment application has been made in good faith. Though there has been delay in filing the amendment petition, considering the stage at which, the petition has been filed, the trial Court was right in allowing the petition subject to payment of cost of Rs.1500/- to the defendants. In my considered view, the aforesaid approach adopted by the trial Court appears to be bona fide and the same does not warrant interference.

14. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar(CS-II)

To

The I Additional District Munsif,



Copy to

The Section Officer, (2 copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Ms.J.Anandavalli, Advocate Sr.No.79802

VSV

VB/SV/SAR2/05.10.2018/4P/5C

order made in
C.R.P. (MD) (PD) No.2732 of 2015
and
M.P. (MD) No.1 of 2015
23.08.2018