



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.2754 of 2015

and

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

N.Shaji,
rep. by his wife/guardian
V.S. Mary Sheeja

.. Petitioner

vs

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

.. Respondents

Revision filed under Article 227 of Constitution of India against the Fair and Decretal Order dated 09.09.2015 in I.A.No.443 of 2015 in O.S.No.284 of 2012 on the file of the I Additional District Munsif Court, Kuzhithurai.

For Petitioner : Ms.J.Anandavalli

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

ORDER

This Civil Revision Petition is directed against the order dated 09.09.2015 passed in I.A.No.443 of 2015 in O.S.No.284 of 2012 on the file of the I Additional District Munsif Court, Kuzhithurai, partly allowing the petition for amendment that too on payment of cost of Rs.750/- on or before 16.09.2015, failing which the petition shall stand dismissed. The petitioner is the plaintiff 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.443 of 2015 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 old family house and one-fifth share in



the remaining two-third share in the plaint schedule property. Altogether, the plaintiff is entitled to 9.745 cents of land two-third share in the old family house.

4. According to the plaintiff, at the time of filing of the suit the plaintiff has claimed 3.400 cents of land one-fifth share in the family house and in the year 2012, his share was valued at Rs.40,000/-. Now the value of the landed properties have reduced considerably and the plaintiff was claiming larger share in the plaint schedule property and therefore the value of his share was to be fixed at Rs.90,000/-. Hence, the value of the suit has to be suitably amended.

5. Resisting I.A.No.443 of 2015, the defendants filed counter stating that the plaintiff was estopped from amending the plaint. In fact, in the original plaint, the plaintiff had denied the right of his father Nesayyan and filed the suit for partition and therefore, the plaintiff cannot amend the plaint as such. It is stated that the value assessed in the fictitious share alleged in the plaint was very low and imaginary. Assuming that the plaintiff is entitled to the larger share in the plaint schedule property and the value of the share would be more than Rs.1 lakh, the District Munsif Court has no jurisdiction to entertain the suit and prayed for dismissal of the suit.

6. Upon consideration of the rival submissions, the trial Court partly allowed I.A.No.443 of 2015 that too on payment of cost of Rs.750/-. Assailing the same, the defendants have filed this Civil Revision Petition.

7. I heard Ms.J.Anandhavalli, learned counsel for the petitioner and Mr.C.K.M.Appaji, learned counsel for the respondents and also perused the materials available on record.

8. The learned counsel for the plaintiff submitted that the amendment petition is only consequential amendment for valuation on the amendment of enhancement of share ordered in I.A.No.886 of 2014 and the trial Court has not understood the application in its proper perspective. He would submit that the trial Court erred in holding that the plaintiff has to file application for amendment showing proper valuation of the property and also erred in holding that the valuation would be higher than the one stated by the plaintiff is without any records. Hence, prayed for setting aside the order of the trial Court.

9. Per contra, the learned counsel for the defendants submitted that the value assessed in the fictitious share alleged in the plaint was very low and imaginary and if the correct value
[~~https://www.hcscs.com/hcscs/~~](https://www.hcscs.com/hcscs/) District Munsif Court has no jurisdiction to entertain the suit. He would submit that there is no bona fide in the petition filed for amendment.



10. It is seen that while partly dismissing the petition, the trial Court observed that the plaintiff is not entitled to the relief as prayed for in I.A.No.443 of 2015, however, the plaintiff has to take steps to ascertain the correct value of the suit property and then sought amendment of the plaint. It is also seen that while allowing the petition partly, the trial Court ordered cost of Rs.750/- payable by the plaintiff to the defendants.

11. This Court is unable to subscribe the aforesaid finding arrived at by the trial Court, for the reason that only the plaint averments ought to be taken into consideration for valuing the suit property and deciding the court fee issue.

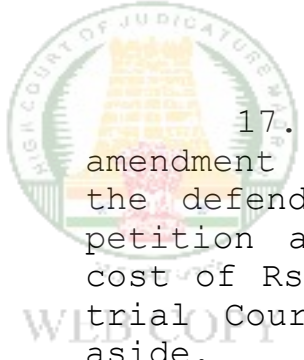
12. In the amended plaint paragraph 5, it has been averred that the suit property has not yet partitioned by metes and bounds in between the plaintiff and the defendants. Joint possession causes much inconvenience for the proper enjoyment of the plaint schedule property. Though in the written statement, it has been stated that internal partition took place between the parties, nothing has been produced to prove the same. More over, the aforesaid aspect will be decided only at the time of trial.

13. It is to be mentioned that on an earlier occasion, the plaintiff had filed I.A.No.886 of 2014 seeking to amend the plaint stating that pending suit, he had purchased the property and thus, the plaintiff is entitled to 7.932 cents of land and one-third share in the old family house and one-fifth share in the remaining two-third share in the plaint schedule property. Pursuant to allowing of I.A.No.886 of 2014, the plaintiff has valued the suit at Rs.90,000/-. Assailing the order in I.A.No.886 of 2014, the defendants have filed C.R.P.(MD) No.2732 of 2015 and the same was dismissed by this Court.

14. The plaintiff has categorically stated that he is a co-owner of the property, who is deemed to be in joint possession. If that being so, the court fee paid under Section 37(2) of the Tamil Nadu Court Fees and Suits Valuation Act, is also correct.

15. It is settled that in partition suit, the plaint allegations are the deciding factor as regards the court fee payable. Further, as stated supra, the contention of the plaintiff that when the plaintiff has alleged joint possession, that ought to have been taken into consideration for the purpose of court fee.

16. As rightly argued by the learned counsel for the plaintiff, the amendment sought for in I.A.No.443 of 2015 is only for amendment for valuation of the amendment of enhancement of share claimed in I.A.No.886 of 2014.



17. The trial Court arrived at a finding that if the amendment petition was allowed, no prejudice would be caused to the defendants. However, the trial Court partly dismissed the petition and partly allowed the petition subject to payment of cost of Rs.750/- to the defendants. The aforesaid finding of the trial Court is unsustainable and the same is liable to be set aside.

18. In the result, the Civil Revision Petition is allowed. The order passed in I.A.No.443 of 2015 in O.S.No.284 of 2012 on the file of the I Additional District Munsif Court, Kuzhithurai is set aside. 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,
Kuzhithurai.

Copy to

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

+1cc to Mr.Ms.J.Anandavalli, Advocate Sr.No.79803

VSV

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

order made in
C.R.P. (MD) (PD) No.2754 of 2015
and
M.P. (MD) No.1 of 2015
23.08.2018