



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 31.01.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

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CRP(PD) (MD) No.557 of 2017
and
CMP(MD) No.2549 of 2017

Easwara Thevar ... Petitioner/Petitioner/Plaintiff
vs.
Alageswari ... Respondent/Respondent/Defendant

Petition filed under Article 227 of the Constitution of India, against the fair and executable order dated 24.11.2016 passed in I.A.No.1010 of 2015 in O.S.No.268 of 2011 on the file of Subordinate Court, Srivilliputtur and allow the same.

For Petitioner : Mr.T.R.Jeyapalam
For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed against the fair and executable order dated 24.11.2016 passed in I.A.No.1010 of 2015 in O.S.No.268 of 2011 on the file of Subordinate Court, Srivilliputtur.

2.The revision petitioner is plaintiff and respondent is defendant. The revision petitioner filed O.S.No.268 of 2011 on the file of Subordinate Court, Srivilliputtur, for partition of 1/2 share in the suit properties. Pending suit, the revision petitioner filed amendment application to amend the suit prayer of partition into declaration and permanent injunction, stating that the defendant is his wife and the suit properties were purchased in the name of defendant out of love and affection. However, the entire sale consideration for purchase of the suit property was paid by him and the suit property is also in his exclusive possession and enjoyment.

3.The respondent/defendant contended that she is living away from the revision petitioner for the past 5 years and taking advantage of the fact that the suit properties are standing in her name, the revision petitioner is trying to alienate the same and therefore, prayed for dismissal of the amendment application.

4.The Trial Court by impugned order dismissed the amendment application holding that allowing the amendment application will change the entire character of the suit. As against the said order, this revision petition has been filed.



5. Heard the learned counsel for the petitioner. Despite service of notice, the respondent has not chosen to appear either in person or through pleader. Hence, this Court is inclined to pass orders on merits.

6. Perusal of the records shows that the revision petitioner filed the suit for partition of 1/2 share in the suit properties. Admittedly, the parties are husband and wife and when the suit was listed for trial, present amendment application has been filed, by which, the petitioner sought to delete the relief of partition in the suit by incorporating the relief of declaration and permanent injunction stating that he is in exclusive possession and enjoyment of the suit properties.

7. Perusal of the impugned order shows that the Trial Court dismissed the amendment application observing that the suit was filed in 2011 and the amendment application has been filed in 2015 and if really the suit properties were purchased by the petitioner on his own income, he should have sought for the proposed relief even at the time of filing of the suit. Further, the petitioner has not explained the delay in seeking the relief and it is barred by limitation. Moreover, allowing the amendment application will change the entire nature and character of the suit and therefore, I am not inclined to interfere with the order passed by the learned Judge.

Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge,
Srivilliputtur.

Copy to

The Record Keeper, VR Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.T.R.Jeyapalam, Advocate Sr.No.45613

BALA

VB/MR/SAR2/15.02.2018/2P/5C

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