

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2019

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR. JUSTICE C.SARAVANAN

O.S.A.No.33 OF 2019
and
C.M.P.No.2640 of 2019

R.Madhiyalagan

...Appellant/1st Plaintiff

Vs

1.M.Vennila
2.R.Annathurai
3.R.Dhanapal

4.Porselvi

...Respondents/ 2 to 4 Plaintiffs

5.N.Niraiselvi
6.R.Saroja

7.R.Selvakumar
(RR7 & 8 impleaded as per order
dated 02.12.11 in A.5625/11)

8.R.Manoharan
9.V.Banumathy
10.Seetha Viswanathan

R.Ravichandran (deceased)
11.Radha Ravichandran
12.Deepthi Ravichandran
13.Shruthi Ravichandran

...Respondents/Defendants

(Since no claim against
10 to 13, they are given up)

Appeal preferred under Order XXXVI Rule 1 of O.S. Rules r/w
Clause 15 of Letters Patent against the order and decretal
order dated 19.11.2018 made in A.No.5623 of 2018 in C.S.No.954
of 2005.

A.5623/2018:- Praying the Court to amend the schedule to the plaint by including the House property at No.1, New Street, Thousand Lights, Chennai -6, as item No.4 of the Plaint schedule the description of which is given in the Judges summon.

For Appellant : Mr.M.Kamalanathan

For Respondents: Mr.Y.Jyotish Chander for R4
Mr.B.Damodaran for R5
Mr.S.Diwakar for R7 and R9
Others - No appearance

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This appeal is directed against the order dated 19.11.2018 made in A.No.5623 of 2018 in C.S.No.954 of 2005, whereby the learned single Judge rejected the application.

2.Appellant is the first plaintiff in the suit filed for partition and separate possession. As the other plaintiffs have not joined the appellant, they have been arrayed as respondents.

3.It is the case of the appellant that he is the legal heir of the first wife of the deceased T.M.Ramachandran. According to the appellant, the deceased T.M.Ramachandran had three wives and the defendants are the legal heirs of the other two wives with the third defendant being the third wife. The suit was laid as early as 14.07.2005. At the time of filing the suit, the property was situated in Thousand Lights has not been included. A written statement was filed by defendants 1 and 2 on 07.08.2007. It is alleged inter alia treating that a partition was effected between the deceased father T.M.Ramachandran and defendants 3 to 6. The aforesaid registered partition deed was also enclosed along with written statement and the same was also marked as Ex.D4. The issues were framed in the year 2011. Defendants 7 and 8 filed written statement in the year 2012, which we are not concerned with for the purpose of disposal of this appeal.

4.When the parties went before the box, P.W.1 was asked about the partition deed under Ex.D4. He has stated that he denied the suggestion that purposely he has not included the other properties belonging to the deceased T.M.Ramachandran, which were allotted to defendants 3 to 6. This was recorded on 25.02.2013.

5. Thereafter, the appellant along with others filed an application in A.No.5623 of 2018 after the evidence was closed and argument started - on 17.07.2018. The following is the necessary averment made:

7. I state that I was regularly visiting the 3rd item of the property in Neelangarai and in the recent past I am not keeping good health and therefore I requested the 2nd plaintiff, Annadurai to go to the Neelangarai property. Lastly when he went to the property on 15.07.2018 he met the 5th defendant and discussing with the progress of the case. At that time the subject relating to the above property at Thousand Lights was also discussed and the 5th defendant informed that he has got 1/2 share in the property by virtue of the settlement executed by his mother, the 3rd defendant. Only at that time he was given to understand that the above property was in the name of my father, T.M.Ramachandran and 5th defendant is having 1/2 share in the said property. Hence this application.

6. Learned single Judge rightly dismissed the application inter alia holding that the appellant was quite aware of the factum of registered partition deed way back in the year 2007 and he denied the suggestion with respect to the said property in the year 2013. However, raising a contrary plea, an averment has been made in para 7 of the application as if he came to know the same only on 15.07.2018. Accordingly, the application was dismissed and hence the present appeal.

7. Learned counsel appearing for the appellant would submit that in a suit for partition, all the parties stand on the same footing. The suit is not required to be dismissed for partial partition, which is a curable defect. Liberty ought to have been given to include the property which would not have prejudiced any other party. The object is to avoid multiplicity of proceedings. Therefore, the application ought to have been allowed. To buttress his submission, reliance has been made on the following decisions:

(i) T.P.Palaniswami and Another Vs. Deivanaiammal and Others (96 LW 560)

(ii) M.Kulasekaran and Another Vs. M.Dhanapathy and Others (2017 4 LW 382)

(iii) A.A.Ganga and Another Vs. A.R.Usha and Others (2010 (4) CTC 331)

(iv) Solavaiammal and Others Vs. Ezhumalai Gounder and Another (2012 (1) CTC 159)

(v) The Managing Trustee Neycer Educational Trust and Another Vs. Vijaya Baskar and Others (2015 4 LW 721)

(vi) Kannan and Another Vs. Manikammal and Others
(2017 (3) CTC 327)

(vii) V. Jayalakshmi and Others Vs. Kasirajan and
Others (2016-5 LW 810)

(viii) Revajeetu Builders and Developers Vs.
Narayanaswamy and Sons and Others ((2009) 10 SCC 84)

8. Learned counsel appearing for the fourth respondent submitted that here is the case where the appellant was aware of the partition atleast in the year 2007. A suggestion was also put to him about the very same property by way of examination, wherein he has specifically denied a suggestion that he has not included the other properties purposely, which are belonging to defendants 3 to 6. Therefore, the learned single Judge was right in dismissing the application, which has been filed after the conclusion of the evidence and during the arguments. Learned counsel made reliance upon the judgment of the Apex Court in Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others ((2009) 10 SCC 84) in this regard.

9. We do not find any merit in this appeal. The suit has been filed in the year 2005. The appellant was quite aware of the registered partition deed effected between T.M. Ramachandran and defendants 3 to 6 especially when the same was filed along with the written statement filed in the year 2007. In any case, the appellant was certainly aware of it, as seen from the evidence adduced by him and culled out by the learned single Judge while dismissing the application. The aforesaid fact would also show that the averment made in the affidavit filed by the appellant in support of the application in para 7 as recorded supra is obviously false. As rightly submitted by the learned counsel appearing for the respondents, the Court will have to very wary in allowing the application for amendment which has been filed after the conclusion of the evidence and when the party was quite aware of it decades ago. The suit has been pending from the year 2005 onwards. Once we find that the reason assigned by the appellant in not filing the application on time is false, he is not entitled for the relief especially when the case has reached the argument stage. This is nothing but an attempt to drag on the proceedings. The appellant, having denied the suggestion, as recorded by the learned single Judge, is not entitled to file the application.

10. The judgments relied upon by the learned counsel appearing for the appellant are not applicable to the case on hand. In such view of the matter, we do not find any merit in the appeal. Accordingly, this Original Side Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11. Taking note of the fact that the suit is of the year 2005, we request the learned single Judge dealing with the matter to make an endeavour to dispose it of within a period of three months.

mmi

Sd/-
Assistant Registrar

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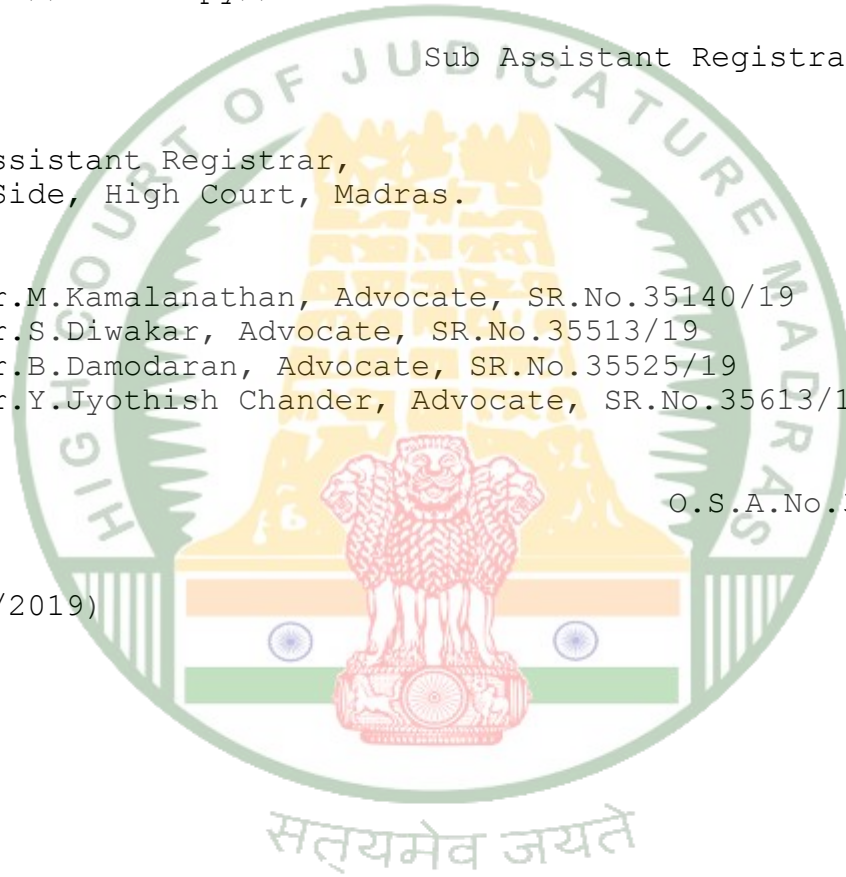
Sub Assistant Registrar

To
The Sub Assistant Registrar,
Original Side, High Court, Madras.

+1cc to Mr.M.Kamalanathan, Advocate, SR.No.35140/19
+1cc to Mr.S.Diwakar, Advocate, SR.No.35513/19
+1cc to Mr.B.Damodaran, Advocate, SR.No.35525/19
+1cc to Mr.Y.Jyothish Chander, Advocate, SR.No.35613/19

O.S.A.No.33 of 2019

Kak (30/05/2019)



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