

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.08.2019

Coram

The Honourable Mrs.**Justice R.HEMALATHA**

C.R.P.(PD)No.369 of 2013

and

M.P.No.1 of 2013

Sethuraman

... Petitioner

Vs.

1. Thasil @ Dhanraj
2. Soodamani
3. Jayalakshmi
4. Krishnaveni
5. Damodaran
6. Ramesh @ Paranthaman
7. Shanthi

.... Respondents

This Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the fair and decreetal orders dated 29.07.2011 passed in I.A.No.202 of 2011 in O.S.No.103 of 2009 by the learned District Munsif cum Judicial Magistrate, Neyveli.

For Petitioner : Mr.T.Arockiadass

For Respondents : No appearance.

ORDER

The present civil revision petition has been filed against the orders dated 29.07.2011 passed in I.A.No.202 of 2011 in O.S.No.103 of 2009 by the learned District Munsif cum Judicial Magistrate, Neyveli.

2. The revision petitioner is the plaintiff in O.S.No.103 of 2009 on the file of the District cum Judicial Magistrate, Neyveli. He filed the said suit for partition of the suit properties into two equal shares and to allot one such share to him and also for costs. The defendants filed their written statement and both parties went for trial. The plaintiff examined himself as P.W.1 and after his cross examination, he filed a petition under Order VI Rule 17 of the Code of Civil Procedure in I.A.No.202 of 2011 in O.S.No.103 of 2009 praying to include certain properties in the suit schedule. The main contention of the revision petitioner/plaintiff is that he had failed to include all the joint family properties in the suit schedule and he could not furnish all the details of the joint family properties to his counsel at the time when the plaint was drafted. The respondents/defendants in their counter contended that the petitioner/plaintiff had filed this application belatedly and that the suit in O.S.No.103/2009 was filed without including all the joint family

properties and also without impleading the purchasers of certain properties belonging to the joint family. According to them, the petition has been filed only to harass them and therefore, the petition is liable to be dismissed. The learned District Munsif cum Judicial Magistrate, Neyveli, after analysing the evidence on record, dismissed the petition filed by the plaintiff on the following grounds.

(i) P.W.1 has deposed in his cross examination that he has not left out any joint family property in the suit.

(ii) He has not adduced any documentary evidence to show that the properties indicated in the application are also joint family properties.

(iii) The respondents in their counter though have specifically contended that some of the joint family properties were sold by the first respondent and by the petitioner, the petitioner did not include those properties.

(iv) The purchasers of some of the items are not impleaded in the present application.

(v) The application is filed by the plaintiff after the commencement of trial and therefore, the same cannot be allowed.

3. The learned District Munsif cum Judicial Magistrate, Neyveli, pointing out the above lapses on the part of the plaintiff, dismissed the application vide his fair and decreetal orders dated 29.07.2011. Aggrieved over the same, the present civil revision petition is filed.

4. Mr.T.Arockiadass, learned counsel appearing for the revision petitioner contended that the revision petitioner could find out the properties belonging to the joint family only at the time of cross examination and therefore, he filed the application under Order VI Rule 17 of the Code of Civil Procedure in I.A.No.202 of 2011 praying to include all the properties which should be partitioned among the family members. His further contention is that if all the properties are not included in the suit, the suit would become bad for partial partition.

5. No appearance on behalf of the respondents.

6. It is pertinent to point out that the suit in O.S.No.103 of 2009 was filed for partition of the suit properties. Though the application is filed after the commencement of the trial, it is to be borne in mind that in a suit for partition, all the properties belonging

to the family should be included. Though the respondents in their counter had contended that some of the joint family properties were sold by the petitioner and the respondents, they have not furnished the details of the properties which were sold in favour of the third parties. But it is clear from the counter filed by the respondents that there are some more family properties which are omitted to be included in the suit in O.S.No.103 of 2009. It is well settled that the amendment petitions are to be liberally considered and unless any prejudice is shown to be caused to the defendants, the application should be allowed. Since this is the suit for partition, I hold that inclusion of the properties belonging to the joint family are absolutely necessary for the just decision of the case. If this petition is not allowed, the suit for partition would fail for partial partition and it would lead to multiplicity of proceedings. The plaintiff has also contended that he came to know about the properties mentioned in the petition only during the course of cross examination. Thus, he has shown sufficient cause for not including all the properties jointly possessed by the family at the time of filing the suit. In the facts and circumstances, I hold that the orders passed by the learned District Munsif cum Judicial Magistrate, Neyveli is liable to be set aside. Since the suit is of the year 2009, the learned District Munsif cum Judicial Magistrate, Neyveli is

directed to dispose of the suit in O.S.No.103 of 2009 within a period of three months from the date of receipt of a copy of this order.

7. With the above observations, the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

14.08.2019

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Index : Yes/No

Internet: Yes/No

Speaking order/Non Speaking order

To

The District Munsif cum Judicial Magistrate,
Neyveli.

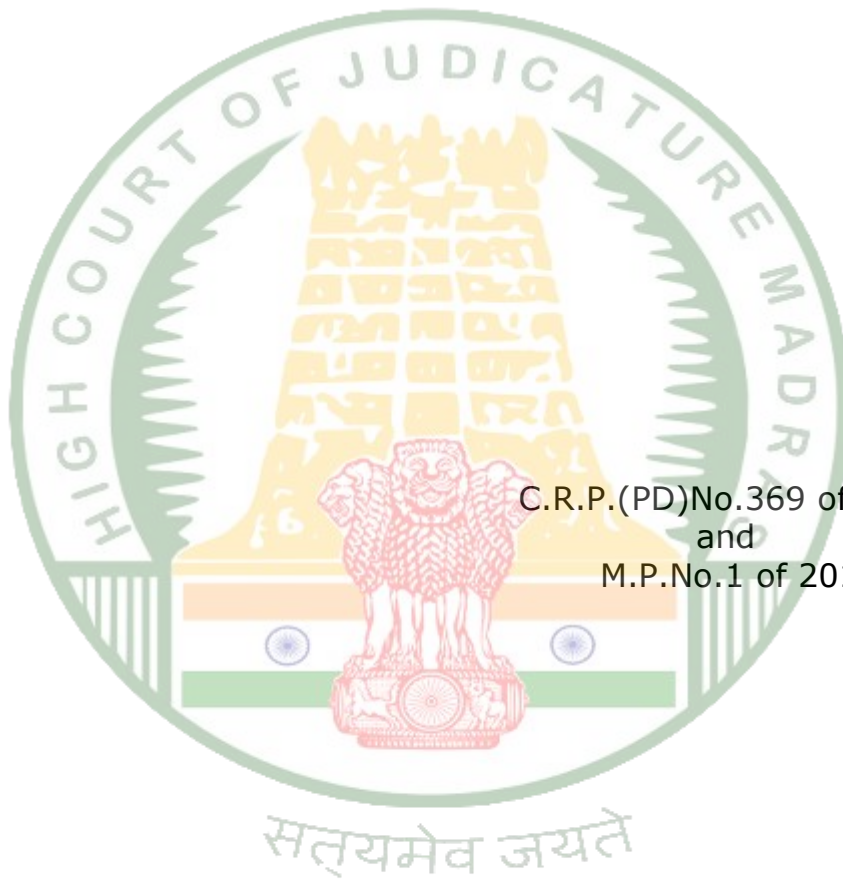


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R.HEMALATHA.J.,

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