

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P(PD)No.4697 of 2013

and

M.P.No.1 of 2013

1. R.Srinivasan

2. S.Rajini

... Petitioners/Defendants 1 & 4

Vs.

Rajesh

... Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 03.07.2013 made in I.A.No.26 of 2013 in O.S.No.11 of 2012 on the file of the I Additional District and Sessions Judge, Vellore, vellore District by allowing the Civil Revision Petition.

For Petitioners : M/s.L.K.Manjunath
For Respondent : Mr.V.Raghavachari

WEB ORDER COPY

This Civil Revision Petition has been filed as against the dismissal order dated 03.07.2013 in I.A.No.26 of 2013 in O.S.No.11 of 2012 on the file of the I Additional District and Sessions Judge, Vellore, vellore District, rejecting

the application to amend the pleadings of the plaintiffs and include certain properties.

2. The suit in O.S.No.11 of 2012 was filed for partition of certain properties filed by the plaintiffs. The defendants 1 and 4 filed written statement inter alia contending that he has purchased properties in the name of plaintiffs. The properties are the joint family properties and therefore, those properties also to be included in that plaint as suit schedule property. The trial Court dismissed the application on the ground that the amendment application has been filed after commencement the trial, aggrieved over the same, the present Civil Revision Petition came to be filed.

3. Heard M/s.L.K.Manjunath, the learned counsel appearing for the revision petitioners and Mr.V.Raghavachari, learned counsel appearing for the respondent.

4. The learned counsel appearing for the Revision Petitioner would contend that the properties are to be included in the plaint itself. Pleadings in the written statement show the nature of the properties purchased by defendant in the name of others, only those properties also to be included in the suit schedule property. Hence, prayed for allowing the

application and also submit that there is no bar to allow the amendment application after commencement of trial.

5. Heard respondent counsel. I have perused the entire order, it is to be noted that the application has been filed to amend the plaint pleadings and include certain properties. It is curious to note that if any such application to amend the plaint pleadings by defendant is not permissible in law under Order 6 Rule 17 C.P.C., the Court may allow either party to amend the pleadings in such a manner. Though it is the contention that in the partition suit that all are plaintiffs and defendant, there is no dispute with regard to that aspect.

6. On perusal of the pleadings it is not the case of the petitioner that the property is treated as joint family properties and omitted to be included in the suit schedule property. On the contrary, it is the contention of the defendant that after he moved to the Ambore, he has purchased the properties out of his own income in the name of others that being a position the amendment cannot be allowed. It is for the defendant to plead and prove the said properties are in fact joint family properties in the trial. On such proof the suit would be filed on the ground of partial partition. It is always open to the defendant to establish in the trial that these properties sought to be

included in the plaint is a joint family properties and the suit is bad for partial partition, without exercising such option to prove the matter before the trial Court, he cannot seek for amendment of the plaint.

7.The learned counsel appearing for the revision petitioner has relied the judgment of the 2010 (4) CTC 331 is held as follows:

“Code of Civil Procedure, 1908 (5 of 1908), Order 6, Rule 17_ Amendment of plaint - In a Suit for partition, Plaintiffs are Defendants and Defendants are Plaintiffs - Defendant is entitled to include property left out by Plaintiff _ Amendment allowed to have a complete adjudication and to avoid future litigation _ Contention of Plaintiff that he is dominus litus, held, unjustified - Ramasamy Vs. P.Marappan, 2005(3)MLJ 663 (dissented).”

8. There is no doubt this Court had held that the parties in the suit are all plaintiffs and defendant there is no dispute in this regard. In the above judgment the amendment was allowed on the ground that one of the joint family property was omitted in the plaint. But as already discussed pleadings of the defendant himself indicate that after he moved out, he has purchased the properties in others name out of his own income, same indicate that properties are not joint family properties. At any event, it is for the

defendant to establish before the trial, that those properties are joint family property and the suit is bad for partial partition.

9. With the above observation this revision petition is dismissed.

The trial Court is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order. The trial Court is also directed to frame the issue with regard to the character of suit properties sought to be included and pleaded in the written statement as to whether those properties are joint family properties or not. No costs. Consequently, connected miscellaneous petition is also closed.

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Index: Yes/No
Speaking/Non-Speaking
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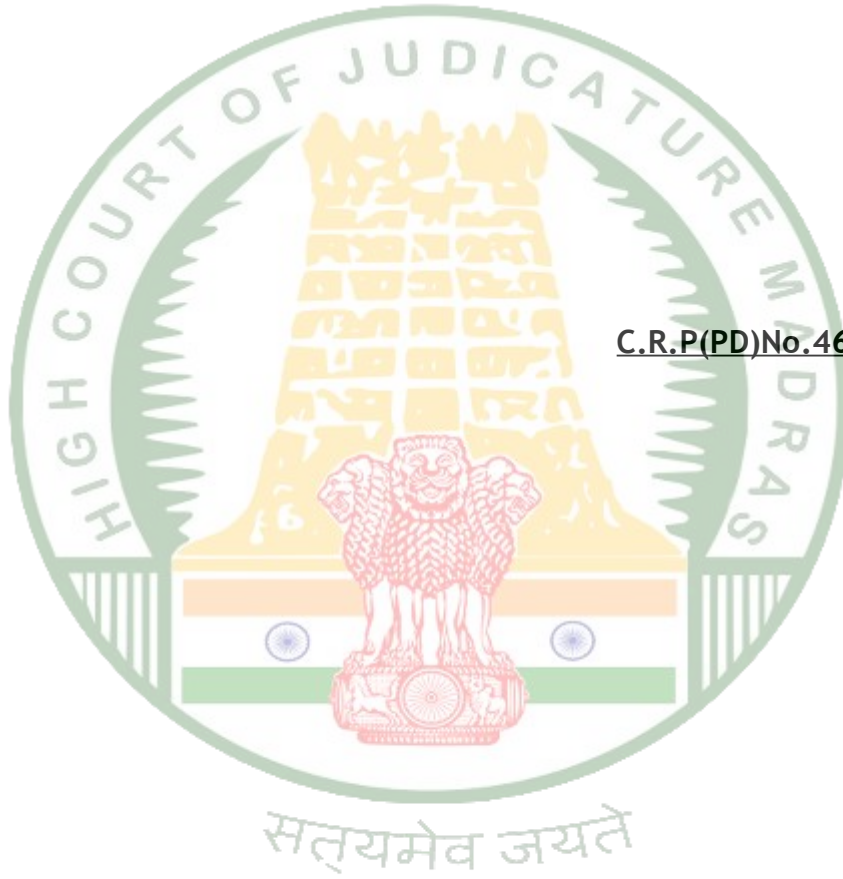
To

1. The I Additional District and Sessions Judge, Vellore, vellore District.
2. The Section Officer, VR Section, Madras High Court.

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N.SATHISH KUMAR, J.

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