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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2019

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THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P(PD) (MD)Nos.1242 and 1243 of 2014

and

M.P. (MD) Nos.2 and 2 of 2014

C.R.P. (MD)No.1242 of 2014

1.Packiam

2.Michaelammal : Petitioners/Petitioners/Appellants

.. Vs ..

1.Joseph

2.Anthony Raj : Respondents/Respondents/Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order in I.A.No.107 of 2011 in A.S.No.15 of 2011, dated 31.07.2012 on the file of the Sub Court, Kovilpatti and allow this Civil Revision Petition.

C.R.P. (MD)No.1243 of 2014

1.Packiam

2.Michaelammal : Petitioners/Petitioners/Appellants

.. Vs ..

1.Joseph

2.Anthony Raj : Respondents/Respondents/Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order in I.A.No.78 of 2011 in A.S.No.15 of 2011, dated 31.07.2012 on the file of the Sub Court, Kovilpatti and allow this Civil Revision Petition.

For Petitioners : Mr.P.T.Ramesh Raja
in both cases

For Respondent : Mrs.P.Jessi Jeeva Priya
in both cases for Mr.R.Aravindan

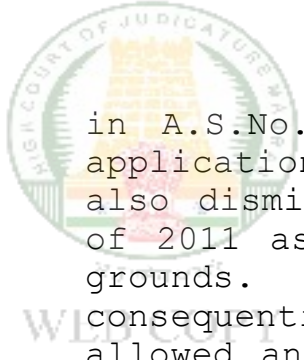
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plaintiffs in the suit in O.S.No.52 of 2008 on the file of the District Munsif Court, Kovilpatti who are also appellants in A.S.No.15 of 2011 on the file of the Sub Court, Kovilpatti.

2.The revision petitioners filed the suit in O.S.No.52 of 2008 for partition and separate possession of their $\frac{1}{2}$ share in the suit property. The respondents in these Civil Revision Petitions are the brothers of the revision petitioners. Originally, the suit was filed in respect of only one item of property. It is stated that the defendants/respondents in these Civil Revision Petitions have also taken a stand in the written statement that the suit is not maintainable as some more properties of the parties have not been included in the suit. The suit was also dismissed on the ground of partial partition. The plaintiffs who preferred the appeal filed an application in I.A.No.107 of 2011 to amend the plaint and another application in I.A.No.78 of 2011 for amendment of the memorandum of ground to include the two items of properties which according to the petitioners are the properties of their mother and devolved on them after her death. Though the respondents have contested the suit on various grounds, it is not seriously in dispute that the suit was dismissed mainly on the ground that the suit for partial partition is not maintainable as the properties of the mother have not been included in the suit for partition.

3.The lower Court dismissed the applications mainly on the ground that the trial Court has dismissed the suit and rendered the judgment on the basis of the properties which are shown in the suit schedule and that additions of further properties at the appellate stage would enlarge the scope of the suit itself. Aggrieved by the order of the lower Court, the plaintiffs have preferred the above Civil Revision Petitions.

4.A suit for partition is different from other suits in which the cause of action for the plaintiff or any one of the sharer who is entitled to a share in the suit property survives and is entitled to pursue his remedy till the properties are divided by metes and bounds, for all the sharers. The trial Court has dismissed the suit mainly on the ground that some of the properties belongs to the parties are not included in the suit schedule and therefore, the suit for partial partition is not maintainable. When the plaintiffs filed an amendment application at the appellate stage, the lower Court dismissed the said application as if the scope of the suit will be enlarged by allowing the petition for amendment by including some of the items. Even before this Court the fact that the two properties which are sought to be included in the schedule are available for partition is not in dispute. In such circumstances, the dismissal of the suit for partition is not proper and the parties need not be driven to file yet another suit for partition once again unnecessarily by including the two properties. I.A.No.107 of 2011



in A.S.No.15 of 2011 is for amendment of plaint. Since this application in I.A.No.107 of 2011 was dismissed the lower Court also dismissed the application in I.A.No.78 of 2011 in A.S.No.15 of 2011 as the said petition was for amendment of memorandum of grounds. Since the order passed in I.A.No.78 of 2011 is consequential, both the Civil Revision Petitions are liable to be allowed and hence, allowed. The order passed by the lower Court in I.A.No.107 of 2011 and I.A.No.78 of 2011 in A.S.No.15 of 2011 are set aside. Both the applications in I.A.No.107 of 2011 and I.A.No.78 of 2011 in A.S.No.15 of 2011 stand allowed.

5.The learned Counsel appearing for the respondents in these Civil Revision Petitions submitted that the suit was ultimately dismissed on the ground of partial partition even though the defendants in the suit have raised various other legal and factual issues. In such circumstances, the learned Counsel appearing for the respondents seek direction of this Court to the lower Court to permit them to raise all objections in tune with the written statement. This goes without saying as the suit is ultimately dismissed and the respondents in these Civil Revision Petitions need not file an appeal against the findings of the lower Court. Having regard to the fact that the appeal was filed in 2011 and the appeal is pending for more than eight years, the lower Court is directed to dispose of the appeal as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar(CS)

To
The Subordinate Judge,
Kovilpatti.

+2 CC to M/s.P.T.RAMESH RAJA, Advocate (SR-51182[F] dated 01/03/2019)

+1 CC to M/s.P.JESSI JEEVA PRIYA, Advocate (SR-51306[F] dated 04/03/2019)

srm

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