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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 27.04.2019
CORAM
THE HON'BLE MR.JUSTICE S.S.SUNDAR

C.R.P.(MD) No.886 of 2014
and
M.P.(MD) No.1 of 2014

1.P.Kaliammal @ Chellammal (Died)
2.Poomathi,
W/o.Muthusami,
Through her Power of Attorney,
S.Muthusamy,
S/o.Somasundaram,
Old Door No.10, New No.9,
Servarar Street, Keezhakudiyiruppu,
Devakottai Town,
Sivagangai District. ... Revision Petitioner/Petitioner/LR of
Plaintiff

(2nd petitioner brought as LR of deceased
1st petitioner as per the order of Court
dated 16.12.2015 made in M.P.(MD) No.
2 of 2015 in CRP (MD) No.886 of 2014 by (TMJ))

(S.Muthusamy, Power of Attorney Agent as
per the order of Court dated 16.12.2015
made in M.P.(MD) No.1 of 2015 in CRP
(MD) No.886 of 2014 by (TMJ))

-Vs-

1.CT.Periasamy
2.PR.Kathiravan
3.SP.Senthil
4.SP.Jegadhis
5.KR.Mani
6.M.Meenal ... Respondents/Respondents/Defendants

Prayer: Civil Revision Petition filed under Article 227 of the
Constitution of India, praying to modify the order dated 21.02.2014
made by the District Court, Sivagangai in I.A.No.131 of 2012 in
O.S.No.34 of 2010 and to allow the said application as prayed for.

For Petitioner : Mr.M.S.Bala Subramania Iyer

For Respondents : Mr.VR.Shanmuganathan

**O R D E R**

This Civil Revision Petition is preferred by the plaintiff in the suit in O.S.No.34 of 2010, on the file of the District Court, Sivagangai.

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2.The revision petitioner filed a suit in O.S.No.34 of 2010 on the file of the District Court, Sivagangai for partition of $\frac{1}{2}$ share in all the scheduled mentioned properties and for consequential reliefs. Originally the suit was for four items of properties. During the pendency of the suit, the revision petitioner filed a petition for amendment of plaint. The details of the amendments that was sought by the petitioner is regarding (a) inclusion of the boundary description of the properties; (b) deletion of some of the items in the suit properties and (c) for inclusion of certain properties. Though the amendments that was sought for by the petitioner with regard to deletion of certain properties and for including boundary description of properties, which are already described in the plaint, were allowed, the amendment for the purpose of inclusion of some more properties to the plaint schedule was rejected by the trial Court. Aggrieved over the same, the plaintiff is before this Court with this Civil Revision Petition.

3.The trial Court dismissed the application regarding inclusion of some more items in the plaint schedule only on the ground that there is no record to show that the properties that are sought to be included by way of amendment are joint family properties. It is further stated by the trial Court that the revision petitioner has not stated as to how the properties proposed to be included in the plaint schedule were acquired and that without any such particulars in the petition for amendment, the petition filed by the revision petitioner for amendment of plaint could not be accepted.

4.Though the learned Judge has relied upon several judgments of this Court and the Hon'ble Supreme Court, there is no discussion about the propositions that were laid in those precedents. Conveniently, the trial Court has stated that in view of the proposition of law laid down in those precedents, the petition for amendment for including additional properties cannot be allowed.

5.In the petition for amendment of plaint to include other properties, the Court is not expected to decide at that stage whether the properties are available for partition and that the plaintiff has proved by sufficient materials as to the character of the property to enable her to lay a claim over the property. If the amendment application is filed with an intention to protract the proceedings, contrary to the stand taken in the plaint that was filed earlier, the trial Court may consider the bonafides of the petition for amendment to extend the scope of litigation by including more properties. In the present case, it is not the case of any one that the amendment was sought purposely to delay the proceedings. At the time of amendment, the party is not expected to



produce all the documents and materials with regard to existence of the properties or the right of plaintiff to seek partition in respect of those newly added items.

6. The learned counsel appearing for the revision petitioner pointed out that omission of the properties was due to the fact that the properties which are now sought to be included by way of amendment are the properties that were allotted to the plaintiff's father in a partition of the year 1924 and that the plaintiff was not aware of those properties. It is therefore, important to see that there is some material available for the plaintiff to prove her case that the newly included properties are the properties of plaintiff's father and paternal uncle who had divided the properties by a partition in 1924. It is true that the plaintiff has not given the details of the property or the properties in the affidavit filed in support of the petition. This Court considers this as a mistake. However, there is no justification to deny the relief to the plaintiff in a case of partition to include all the properties which is believed to be belonged to the family of the plaintiff in which she has got a share. The plaintiff is not precluded from claiming right as a co-owner or coparcener any time during the proceedings, if she has shown sufficient cause, for not including at the time of filing the suit. In that view of the matter, this Court is not able to sustain the order of the trial Court in dismissing the portion of the prayer in I.A.No.131 of 2012, by dismissing the amendment insofar as it relates to inclusion of additional properties to the plaint schedule.

7. In the result, this Civil Revision Petition is allowed and I.A.No.131 of 2012 in O.S.No.34 of 2010, on the file of District Court, Sivagangai stands allowed in entirety. It is made clear that the order passed by this Court need not be construed as an order deciding any issue with regard to the existence or entitlement of the plaintiff to lay a claim for a share in any of the property, which is sought to be included by way of amendment. It is open to the respondents to raise all points that are available to them on earth by way of defence. It is stated that the suit was filed in the year 2010. Considering the fact that the suit is 10 years old, the learned District Judge, Sivagangai is directed to dispose of O.S.No.34 of 2012 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, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar(CS)



To

1. The District Judge,
Sivagangai District.

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+1 CC to M/s.M.S.BALASUBRAMANIA IYER, Advocate (SR-63477[F] dated
27/04/2019)

+1 CC to M/s.VR.SHANMUGANATHAN, Advocate (SR-63724[F] dated
29/04/2019)

C.R.P. (MD) No.886 of 2014
and
M.P. (MD) No.1 of 2014
27.04.2019

DS (CS) : 08/05/2019/4P/4C