



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 27.02.2019

DELIVERED ON : 05.04.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (NPD) (MD) No.329 of 2015

and

M.P. (MD) No.1 of 2015

Muthammal

.. Petitioner/Petitioner/Plaintiff

Vs.

1.Ramasamy

2.Murugesan

.. Respondents/Respondents/Respondents

Prayer : This Civil revision petition is filed under Article 227 of Indian Constitution, to set aside the order and decreetal order dated 25.11.2014 made in I.A.No.898 of 2014 in O.S.No.60 of 2012 on the file of the Additional District Munsif Court, Karur.

For Petitioner : Mr.V.Sitharanjandas

For Respondents 1 and 2 : Mr.K.Govindarajan

ORDER

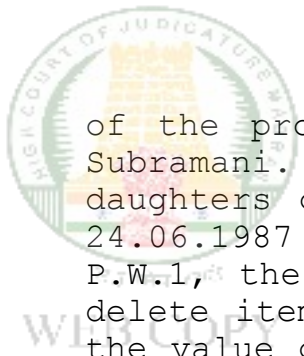
Heard Mr.V.Sitharanjandas, learned counsel appearing for the petitioner and Mr.K.Govindarajan, learned counsel appearing for the respondents 1 and 2.

2.This petition has been filed against the order passed in I.A.No.898 of 2014 in O.S.No.60 of 2012 dated 25.11.2014 on the file of the learned Additional District Munsif, Karur.

3.The petitioner is the plaintiff and the respondents 1 and 2 are the defendants in the suit. The petitioner herein has filed a suit in O.S.No.60 of 2012 before the learned Additional District Munsif, Karur for a prayer of partition and for separate possession. In that suit, the petitioner has filed a petition in I.A.No.898 of 2014 for amendment of the plaint to delete item no.5 of the suit property and that petition was dismissed by the trial Court. Against the dismissal order, the petitioner has come forward with this revision petition.

<https://hcservices.ecourts.gov.in/hcservices/>

4.On the side of the petitioner, it is stated that item no.5



of the property was sold by the plaintiff's mother in favour of Subramani. The first defendant and the plaintiff are the sons and daughters of one Karuppanna Goundar and Karuppanna Goundar died on 24.06.1987 and his wife also is now dead. After the examination of P.W.1, the plaintiff has filed a petition to amend the plaint to delete item no.5 of the property and to amend the plaint regarding the value of the suit property and the Court fee in accordance with the available suit properties. It is stated that this petition is filed only to give up the share in item no.5 of the property and it is the duty of the petitioner to prove the availability of joint family property and that since one of the property is not available with the plaintiff, it is the duty of the plaintiff to delete the property from the schedule of properties.

5. On the side of the respondents, it is stated that one Arukani Ammal executed a release deed in favour of the defendants on 09.12.1994 and the plaintiff is not entitled for any share in the property and the amendments sought for will change the nature and character of the case and that no copy of the sale deed was filed by the petitioner and no reasons are stated in the petition as to why there was a delay in filing this amendment petition and that the burden is upon the person to seek a amendment and the petition is a belated one and that it is not a bonafide petition and this petition will change the nature of the case and prayed the petition to be dismissed.

6. It is seen that the suit is filed for a prayer of partition and the petitioner has stated that item no.5 of the property was sold by her mother and it is not available for partition. The case of the respondents is that the petitioner has not filed the copy of the sale deed in favour of Subramani and the amendment petition is a belated one and that the amendment will change the character of the suit. The suit is for partition and deleting one of the item of the property will not change the nature of the suit. If the property is not available for partition, the lower Court cannot allot a share in the property and the respondents are not in any way prejudice by the amendment.

7. In the above circumstances, the Civil Revision Petition is allowed and the order passed in I.A.No.898 of 2014 in O.S.No.60 of 2012 dated 25.11.2014 on the file of the learned Additional District Munsif, Karur is set aside. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar(Writs)

// True Copy //



To

The Additional District Munsif,
Karur.

WEB COPY

+1 CC to M/s.V.SITHARANJANDAS, Advocate in SR-59319

+1 CC to M/s.K.GOVINDARAJAN, Advocate in SR-59629

C.R.P. (PD) (MD) No.329 of 2015
05.04.2019

mrn

PK/12.04.2019 : 3P/4C