

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD)No. 1050 of 2018

and

C.M.P.No. 5539 of 2018

1.Sunandamma
2.Prema
3.Prabhavathi

...Petitioners

Vs.

1.Gunasekara Reddy
2.Parvathamma
3.B.V.Sampath
4.Chandra Reddy
5.N. Mununagi Reddy

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order in I.A.No.362 of 2017 in O.S.No. 10 of 2008 on the file of the District Munsif & Judicial Magistrate, Denkanikottai dated 03.01.2018.

For Petitioners : Mr.V.Raghavachari

For Respondents : No Appearance

सत्यमेव जयते
O R D E R

The plaintifffs in O.S.No.10 of 2008 have come up with this civil revision petition, chellenging the order dismissing their application for amendment of the plaint made in I.A.No.362 of 2017.

2. The suit is one for partition. In the written statement, a plea is taken to the effect that some of the properties belonging to common ancestor, Veera Reddy have not been included and some of the properties which do not belongto Veera Reddy have been included in the plaint. After the trial comenced, the plaintifffs have come up with an application seeking to include a property measuring about 0.41.0 hectares situate in Survey

No.612/2-A in the suit schedule. Consequential amendments in the valuation of the suit were also sought for.

3. This was resisted by the defendants contending that the application is belated and the property is not partible. The learned Trial Judge rejected the application on the ground that the plaintiffs have not established that the property is partible. The learned Trial Judge also referred to certain earlier amendments that have been carried out at the instance of the plaintiffs.

4. I have heard Mr.V.Raghavachari, learned counsel for the petitioner. Despite service, respondents are not appearing either in person or through counsel, duly instructed.

5. Mr.V.Raghavachari would vehemently contend that the suit is one for partition, the Court must have adopted a liberal approach. Whether the property is partible or not can be decided only after evidence is let in on the merits of the claim and the Court should not have expected the petitioner to prove the nature of the property, even while seeking an amendment to include the property in the schedule.

6. As regards the delay in filing the application, Mr.V.Raghavachari would contend that the fact that the property was omitted to be included in the plaint was a typographical error and the same was noticed just prior to filing of the application. Therefore, according to him, the proviso to Order 6 Rule 17 also stands satisfied. I have considered the submissions of the learned counsel for the petitioner.

7. I do not think that the order of the Trial Court could be sustained. The suit is one for partition, the properties can be included at any time. The only prohibition is the proviso to Order 6 Rule 17, which requires the petitioner to give reasons for not taking steps before the trial commenced. In the case on hand, the Trial has commenced and the petitioner, in the affidavit, very clearly stated that she came to know that the property was omitted only when perusing the plaint just prior to filing of the application.

8. Considering the nature of the suit, I think, the reason assigned is good enough and is in full compliance with the requirements of the proviso to Order 6 Rule 17 of C.P.C. In view of the above, this civil revision petition is allowed, the order of the Trial Court is set aside, the application in I.A.No.362 of 2017 will stand allowed. The plaintiff to carry out the amendment within a period of four weeks from the date of receipt of a copy of this order.

9. Considering the fact that the suit is of the year 2008, the Trial Court will do well to dispose of the suit within four months from the date of the resumption of physical hearings in the Courts at Denkanikottai. It is needless to say that the defendants will have an opportunity to file an additional written statement. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kkn
To:

The District Munsif & Judicial Magistrate,
Denkanikottai.

+1 CC to Mr.V.Raghavachari, advocate sr 33224.

C.R.P(PD)No. 1050 of 2018
and
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RK(CO)
SP(07/12/2020)

सत्यमेव जयते

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