

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2020

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.R.P. (PD). No. 3863 of 2013
and M.P. Nos. 1 of 2013 & 2 of 2015

- 1.Raguraman (Deceased)
- 2.Sakthivel
- 3.R. Devi
- 4.Minor Gokulavasan
- 5.Minor Priyanka
- 6.Minor Geetha

(Petitioners 4 to 6 represented by their
mother & next friend, R. Devi)

(Petitioners 3 to 6 brought on record as
LRS of the deceased 1st petitioner viz.,
Reguraman, vide Court order dated 19.12.2017
made in M.P. No. 1 of 2015 in C.R.P. No. 3863/2013)

... Petitioners

सत्यमेव जयते Vs

- 1.Srinivasan
- 2.Kesavan
- 3.Govarthanagirivasan
- 4.Gokulakannan
- 5.Lakshmanasiva
- 6.Sivabagyam

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7.Sivakalai

... Respondents

(R1 was set exparte before the Trial Court)
(R7 brought on record as LR of the deceased
1st petitioner viz., Reguraman, vide Court order
dated 19.12.2017 made in M.P. No. 1 of 2015 in
C.R.P.No.3863/2013)

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 04.07.2013 made in I.A. No. 246 of 2013 in O.S. No. 391 of 2010 on the file of the II Additional Subordinate and Additional Sessions Court, Salem.

For Petitioners : Mr. D. Shivakumaran

For Respondents : Mr. Saravanakumar (for R2 to R6)
for M/s. I. Abrar Md. Abdullah

No appearance (for R7)

ORDER

The matter is heard through "Video Conferencing".

The present Civil Revision Petition is filed to set aside the fair and decretal order dated 04.07.2013 made in I.A. No. 246 of 2013 in O.S. No. 391 of 2010 on the file of the II Additional Subordinate and Additional Sessions Court, Salem.

2. The petitioners 1 and 2 are the plaintiffs who filed the suit in O.S. No. 391 of 2010 on the file of the II Additional Subordinate and Additional Sessions Court, Salem, for partition against the respondents. After completion of their evidence and when the suit was posted for cross-examination of P.W.1, the petitioners filed I.A. No. 246 of 2013 to amend the plaint to include two properties mentioned in the petition. The respondents opposed the same by filing counter. The learned Judge dismissed the said I.A., by the order dated 04.07.2013.

3. Against the said order of dismissal dated 04.07.2013 made in I.A. No.246 of 2013 in O.S. No. 391 of 2010, the petitioners 1 and 2 have come out with the present petition. Pending Civil Revision Petition, the 1st petitioner died and his legal heirs were impleaded as petitioners 3 to 6 and 7th respondent.

4. Learned counsel appearing for the petitioners submitted that the petitioners left two items of the properties in the suit filed by them for

partition and came to know about the two properties only at the time of preparing cross-examination of P.W.1. The said properties originally belonged to their grandfather Lakshmana Gounder, who inherited the properties from his father Vaiyapuri Gounder. They have enjoyed the property as common property along with respondents 1 and 2. The learned Judge failed to see that in the strict sense the petition filed by the petitioners is only to include the property left out for partition. The petitioners came to know about the properties only when the respondents filed petition for producing additional documents by recalling D.W.1. Immediately, without any delay, the petitioners have filed I.A. No. 246 of 2013 for inclusion of two items of properties also for partition. The learned Judge erred in holding that the petitioners have not explained as to how they came to know about the properties sought to be included. The intention of the petitioners for inclusion of the properties is for complete partition of the property and prayed for allowing the Civil Revision Petition.

5. Learned counsel appearing for the respondents 1 to 6 contended that the petition for amendment is belated one and it cannot be entertained after

commencement of trial and completion of evidence on behalf of the petitioners and when the suit was posted for cross-examination of P.W.1. The petitioners are not entitled for partition of properties in the plaint as well as the properties now sought to be included. P.W.1 has admitted in the cross-examination that all the properties are included in the plaint schedule. The learned Judge considering all the materials on record, dismissed the petition, there is no reason to interfere with the same and prayed for dismissal of the Civil Revision Petition.

6. Though notice has been served on the 7th respondent and her name is printed in the cause list, there is no representation for her either in person or through counsel.

7. Heard the learned counsel appearing for the petitioners as well as the respondents 1 to 6 and perused the materials available on record.

8. The petitioners filed suit for partition. In a suit for partition, all the properties have to be included for partition. Subsequent to filing of the suit, if

some of the properties are found to be left out, those properties also can be included in the suit. The petition for inclusion of left out properties can be filed even by plaintiff or defendant who allege that those properties are also to be partitioned. As far as the amendment is concerned, according to Order VI Rule 17 of C.P.C., the Court can order amendment at any stage of the suit. In the present case, the petitioners have stated that they came to know about the properties left out only when the respondents filed petition for filing additional documents and for recalling D.W.1 for further evidence. From the materials on record, it is seen that the respondents have objected to the amendment on merits of the case. The objection of the respondents has to be considered after conclusion of trial, based on the oral and documentary evidence let in by both the petitioners and respondents. The learned Judge has decided the issue of partition of suit property by considering the petition for amendment itself and thereby, committed an irregularity and illegality. For the above reason, the order of the learned Judge dismissing I.A. No.246 of 2013 is set aside and the I.A. No.246 of 2013 is allowed.

9. In the result, the Civil Revision Petition is allowed. The petitioners are directed to carry out necessary amendments to include the schedule of properties in the plaint within a period of four weeks from the date of receipt of a copy of this order and file amended copy of the plaint before the appropriate forum. Consequently, connected Miscellaneous Petitions are closed. No costs.

18.09.2020

gsa
Index: Yes/No

To

The II Additional Subordinate
and Additional Sessions Judge,
Salem.

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V.M.VELUMANI,J.

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