

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD)No. 271 of 2018
and
C.M.P.No. 1487 of 2018

Chinnasamy (Died)

- 1.V.Subbusamy
- 2.Rengasamy
- 3.Muthusamy
- 4.Ramaraj
- 5.Ramayee

...Petitioners

Vs.

Manickam (Died)

- 1.Arjunan
- 2.Nallammal
- 3.Pandiyan
- 4.Parameswari
- 5.Saroja
- 6.Geetha
- 7.Vijayalakshmi
- 8.Shridar
- 9.Alagammal

..Respondents

Prayer: Civil Revision Petition filed under Section 115 of C.P.C, against the order and decretal order of dismissal dated 03.11.2017 in I.A.No. 76 of 2017 in O.S.No. 4 of 2012 on the file of the Mahila Court (Sessions Judge), Perambalur.

सत्यमेव जयते

For Petitioners : Mr.R.Karunagaran

For Respondents : Mrs.R.Rajaramani for R1
R2 to R9 - No Appearance

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O R D E R

The plaintiff in O.S.No. 4 of 2012, aggrieved by dismissal of their application seeking to amend the plaint to include one more property in the suit have come up with this revision.

2. According to the plaintiffs, the suit properties including the property that is proposed to be added now, belonged to one Mooka Moopan. The said Mooka Moopan had 4 sons namely, Velamoopan, Chinnasamy, Manickam and Arjunan. It is stated that the eldest son Velamoopan died five years prior to the suit and the sons of Velamoopan are the plaintiffs. The defendants are the other children of the Mokka Moopan claiming that there was no partition in the family. The plaintiffs sought for partition.

3. The suit is being resisted by the defendants contending that there was an oral partition even during the life time of the grandfather of the defendants, Suppan, and the properties were divided among the sons orally. The said oral partition was also recorded in the partition deed between the first plaintiff and his family members under a registered document dated 08.02.2010. The learned Trial judge, who considered the application for amendment rejected the same on the ground that the partition deed dated 08.02.2010 reveals that there was a partition in the family and that the properties have already been divided. On the said conclusion, the learned Trial Judge dismissed the application for inclusion of one item of the property in the schedule. Aggrieved, the plaintiffs have come up with this revision.

4. The narration of facts would show that order of the Trial Court cannot be sustained. The Trial Court had gone awry and determined an issue that would arise in the suit. Once the nature of the property as belonging to the family is admitted, whether it is partitioned or not will have to be decided only after trial. The Trial judge has chosen to rely upon Ex.B2, partition deed dated 08.02.2010 to reject the claim of the plaintiffs. I do not think the learned Trial judge was right in doing so even while considering the amendment application. While considering the amendment application, the Trial Court ought not have gone into the merits of the suit and pronounced on the question whether there was a partition or not.

5. In view of the above, this civil revision petition is allowed, the order in I.A.No. 76 of ***2017** is set aside. I.A.No.76 of ***2017** will stand allowed. The plaintiffs shall carry out the amendment and file amended copy of the plaint within four weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar

***Corrected as per order
of this court dated 23/09/2020
in CRP.No.271/2018**

-s/d-

**Assistant Registrar (CS-IV)
dt:29/09/2020**

//True Copy//

Sub Assistant Registrar

To:-

The Mahila Court (Sessions Judge),
Perambalur.

+lcc to Mr.R.Karunagaran, Advocate, **S.R.No.*31166**
dated:31.8.2020

C.R.P(PD)No. 271 of 2018
and
C.M.P.No. 1487 of 2018

AJS (CO)
RV(21/09/2020)
svl(co)
aa29/09/2020

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