

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.28 of 2018 and
CMP No.78 of 2018

1. Pappathi
2. Gyathiri

... Petitioners

Vs

1. Samiappan
2. K.Murugesan

... Respondents

Prayer: The Civil Revision petition filed under Article 227 of Constitution of India, against the fair and decretal order dated 12.12.2017 made in I.A.No.473 of 2017 in O.S.No.65 of 2012 on the file of the learned Additional Sub Court, Erode.

For Petitioners : Mr.C.Harish for
Mr.N.Manokaran

For Respondents : Mr.V.S.Kesavan

ORDER

The plaintiffs in O.S.No.65 of 2012 are on revision, challenging an order dismissing their application for amendment of the plaint.

2. The suit is one for partition. According to the plaintiffs, the suit property though stands in the name of the 1st defendant, is joint family property since it belonged to the family of the 1st defendant. The 1st defendant had two children namely the 2nd defendant and one Sankar Ganesh. The said Sankar Ganesh died unmarried leaving behind his mother Papathi to succeed the case. Therefore, according to plaintiffs, the 1st and 2nd plaintiffs who are the wife and daughter of the 1st defendant are entitled to 2/3rd share in the suit property. The suit went for trial. During trial the 2nd defendant who was examined as DW1, deposed to the effect that the two other properties that were purchased by the 1st defendant were available for partition. Upon such evidence, the plaintiffs sought to amend the plaint for inclusion of those properties.

3. The learned Additional Subordinate Judge, Erode dismissed the application concluding that since the defendants have not taken a plea that the suit is bad for partial partition and the trial had already commenced, the application for amendment cannot be allowed.

4. I have heard Mr.C.Harish, for Mr.N.Manokaran, learned counsel for the petitioners and Mr.V.S.Kesavan, learned counsel for the 2nd respondent.

5. Mr.C.Harish, learned counsel appearing for the petitioners would vehemently contend that even though the defence of partial partition was not taken by the defendants, the partition suit must take in the entire estate. The plaintiffs have adduced the reasons as to why they could not seek amendment earlier in point of time, before the commencement of trial. The very fact that they were unaware of the existence of the properties would be the sufficient reason to answer the requirements of the proviso under Order VI Rule 17 of the Code of Civil Procedure. He would also submit that the mere delay cannot be the reason for dismissing the

application as the same would lead to a multiplicity of the proceedings and the plaintiffs would be denied a just share in all the properties.

6. Contending contra, Mr.V.S.Kesavan, learned counsel appearing for the respondents would submit that the suit is of the year 2012 and it is already delayed. The object of the plaintiffs is to prolong the suit.

7. I am unable to agree with the contentions of Mr.V.S.Kesavan, learned counsel appearing for the respondents. The suit is one for partition. It is for the plaintiffs to include all the partible properties as subject matter of the suit so that the Court can adjudicate the rights of the parties without leaving any scope of multiplicity of the proceedings. In the case on hand, the addition of the properties is to the advantage of the 2nd defendant who is a purchaser and I am therefore of the opinion that the learned trial Judge was not justified in dismissing the application.

8. In view of the above, the Civil Revision petition is allowed. The application in I.A.No.473 of 2017 will stand allowed. The petitioners

shall file an application to carry out the amendment within a period of **15 days** from the date of receipt of a web copy or a certified copy which ever is earlier and the trial Court shall make its endeavour to dispose of the suit within a period of six months from the date of resumption of the physical hearing in the Courts at Erode. No costs. Consequently, connected miscellaneous petition is closed.

01.12.2020

Note: Time bound order
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Index: Yes/No
Speaking order / Non speaking order

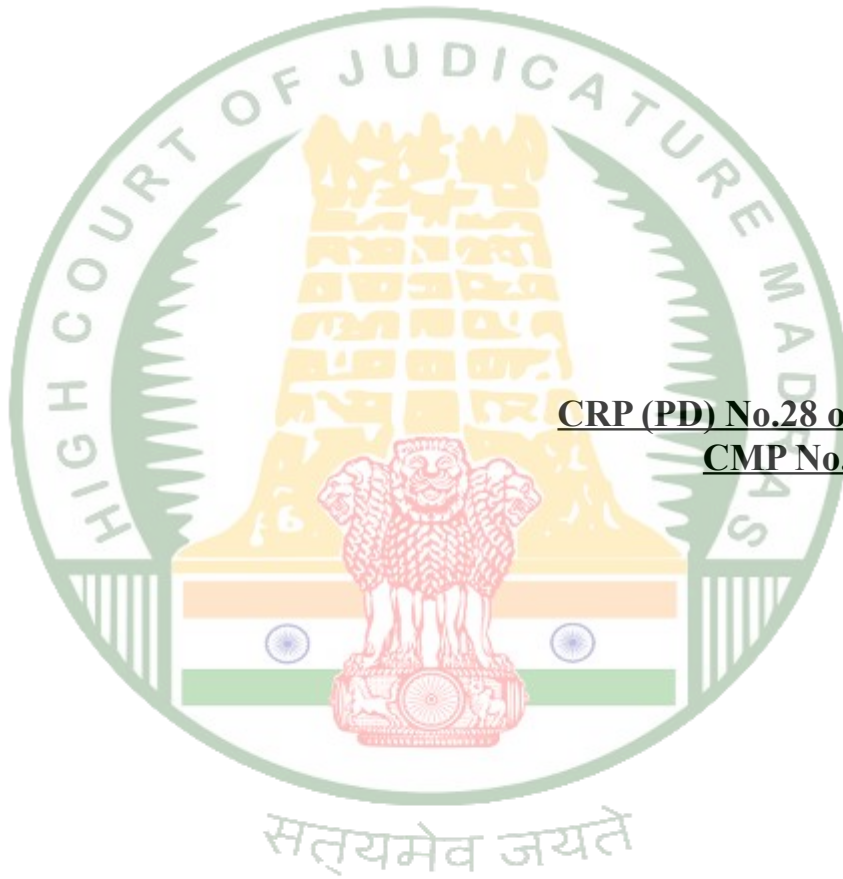
To:

The Additional Sub Court, Erode.

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R.SUBRAMANIAN, J.

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