



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 11.03.2020

Coram

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P. (MD) .No.2307 of 2019

Chelladurai

... Petitioner/Respondent/Appellant

Vs.

1.Premkumar

2.Smitha

3.Valliammal

...Respondents/Petitioners/respondents

Prayer: Civil Revision Petition filed under Article 227 of Civil Procedure Code against the fair and decretal order dated 30.09.2018 passed in I.A.No.63/2018 in A.S.No.30/2014 on the file of the Additional Sub Court, Tenkasi.

For Petitioner

: Mr.S.Balasubramanian for
Mr.T.Selvan

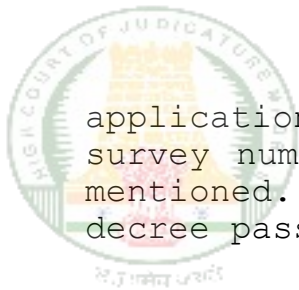
For Respondents

: Mr.S.Ramesh @ Ramaiah

O R D E R

The respondents filed a suit against the petitioner and 3 others for partition and separate possession and charge decree and the suit was decreed. Against that, the petitioner/1st defendant filed two appeals. One appeal was filed against the preliminary decree for partition and also the charge decree created in some of the schedule of the properties. Though the petitioner claimed some of the properties are his self-acquired properties, the Court has rejected the said claim. Challenging the findings, he has filed another appeal. Both the appeals are pending. During the pendency of the appeal, the petitioner filed an application for reception of evidence at the appellate stage and also produced the sale deed created in favour of the third party with regard to the alleged self-acquired property. After filing the document, the respondents filed an application in I.A.No.63/2018 to amend the plaint and decree, stating that though they have filed the suit for partition, in that, the petitioner has taken a defence that some of the properties are his self-acquired properties.

2.In the memorandum of grounds of appeal, it is stated by the respondents herein that, at the appellate stage only, after perusing the document filed by the petitioner herein along with the



application to receive additional evidence, they came to know that survey number of the second schedule property has been erroneously mentioned. Therefore, they wanted to amend the plaint and also the decree passed by the court.

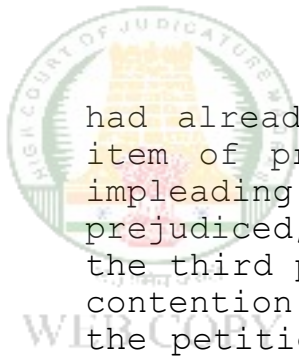
3.The appellate court, after hearing the arguments, allowed the petition to amend the plaint filed by the respondents herein. Challenging the said order, the respondent/appellant therein has filed the present revision petition before this Court.

4.The learned counsel for the revision petitioner would submit that the amendment would change the character of the suit; character and nature of the property and also the respondents/plaintiffs have filed the amendment petition belatedly, after decreeing of the suit. Therefore, he has placed reliance on a judgment of the Hon'ble Supreme Court in the case of **M.Revanna Vs Anjanamma (dead) by L.Rs and others reported in 2019(2) CTC 474**. Thus, he prays for interference of this Court.

5.Learned counsel for the respondents would submit that there is no dispute with regard to the second item of the property, though the first item of the suit property was granted partition. Even though the petitioner claimed some of the properties are his self-acquired properties, he has not produced any document to show that they are not joint family properties and they are his self-acquired properties. Therefore, his claim was rejected by the court below. Challenging the said decree, he has filed an appeal. During the pendency of the appeal, he has filed an application along with the copy of the sale deed for reception of additional evidence under Order 41 Rule 27 of Civil Procedure Code. Both the appeal and application are pending. After perusing the records only, they have taken an application to amend the plaint and decree. He would further submit that there is no dispute with regard to the identification of the property and they are only seeking for amending the boundaries of the property and only survey number has sought to be amended, which will not change either the character of the suit or the claim of the parties. Therefore, in the circumstances, the appellate court has rightly passed the order, which does not warrant any interference.

6.Heard both sides and perused the records carefully.

7.Admittedly, the respondents filed a suit for partition, in which the petitioner/defendant, after passing a preliminary decree and also dismissal of the claim made by him, filed two appeals. During the pendency of the appeals, the petitioner/defendant had filed an application for reception of additional evidence. At that time, he has also produced some document executed in favour of the third party. Though the learned counsel for the petitioner would submit that the petitioner



had already sold the property to third party and now, the second item of property is in the hands of the third party and without impleading the third party, if the decree is amended, he would be prejudiced, hence, before amending, opportunity should be given to the third party purchaser, who is in possession of the property, the contention of the learned counsel for the respondents is that though the petitioner has stated that the second item of property is self-acquired property, he has not produced any document to show that. However, he has sold the property to third party and it is in the hands of the third party and therefore, the suit itself is decreed in favour of the respondents/plaintiffs for partition and disallowed regarding the claim of the petitioner herein and defendant regarding the second item of the property. Aggrieved by the same, he has filed two appeals. Thereafter, he has filed an application under Order 41 Rule 27 of the Civil Procedure Code. It is needless to say that the application Order 41 Rule 27 of CPC has to be dealt with along with the appeal and that cannot be dealt with independently.

8.It is not in dispute that the appeal is continuation of proceedings. Identification of the property is also not in dispute. Boundaries are also not in dispute. According to the respondents/plaintiffs, they wanted amendment only in the extent of the second item of the suit property. The revision petitioner has also filed an application under Order 41 Rule 27 of C.P.C, but in the said application, he has not impleaded the third party purchaser. Therefore, the contention raised by the learned counsel for the petitioner that without impleading the third party purchaser, plaint cannot be amended, is not accepted.

9.In view of the above, this Court is of the view that since both the petitions are pending, at time of deciding the reception of additional evidence, the appellate court can decide for impleadment of the parties. Further, this Court is also of the view that if the extent of the suit property is amended, no prejudice would be caused to the petitioner. Therefore, this Court does not find any perversity in the order passed by the appellate court. Further, there is no merit in this civil revision petition.

10.Since in the plaint itself, survey number and extent have been wrongly given, unless giving opportunity to the parties, relating to survey number and extent, decree cannot be amended straight away. Further, in this case, the order passed by the appellate court can be modified as the respondents/plaintiffs are permitted to amend the plaint second schedule in the plaint. However, the decree cannot be amended at this stage and that can be decided by the appellate court, after receiving the additional evidence and also subject to the result of the appeal. It is for the appellate court to decide whether the decree can be amended after hearing the appeals.



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11.With the above modification, this civil revision petition is disposed of. No costs.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vs

To

The Additional Sub Court, Tenkasi

+1 CC to M/s.S.RAMESH&RAMIAH, Advocate (SR-11356[F] dated 12/03/2020)

+1 CC to M/s.T.SELVAN, Advocate (SR-11653[F] dated 13/03/2020)

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