



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRP(PD)No.416 of 2019

and

CMP.No.2787 of 2019

[Through Video Conferencing]

1.Marayee
2.Dharmalingam
3.Kamalam

... Petitioners / Plaintiffs
vs.

1.Palaniammal
2.Sellappan
3.Subramanian
4.Sellammal W/o. Kandasamy.
5.Kannamal
6.Sellammal W/o. Ramasamy.
7.Marayee
8.Gandheri
9.Sellappan

...Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the Order and Decreetal order passed by the Court of Sessions (Fast Track Mahila) Judge, Namakkal in I.A.No.115 of 2018 in O.S.No.15 of 2017 dated 10.10.2018 on the file of the Sessions (Fast Track Mahila) Judge, Namakkal.

For Petitioner : Ms.Sukanya
For Mr.V.Raghavachari

For R1 & R2 : Mr.S.Senthil

For R3 : Mr.R.Vivek

ORDER

The plaintiffs in O.S.No.15 of 2017 now pending on the file of the Sessions (Fast Track Mahila) Judge at Namakkal are the revision petitioners herein.

2.They have instituted in the said suit for partition and



separate possession with respect to two properties given as "A" Schedule and "B" Schedule to the plaint. Though the properties had been mentioned in the Schedule, the relief of partition was sought only with respect to "A" Schedule property. The application in I.A.No.115 of 2018 had been filed under Order II Rule 2 of the Code of Civil Procedure seeking leave to institute a separate suit and seeking very same relief of partition with respect to "B" Schedule property. They have given various reasons for not including such relief in the present suit. There appears to be some confusion over whom to add as defendants.

3.Order I Rule 3 of the Code of Civil Procedure gives an indication as to who can be added as defendants and in simple terms it is stated that those against whom a cause of action is alleged to exist should be added as defendants.

4.Order I Rule 5 of the Code of Civil Procedure gives a further latitude and it also provides that it is not necessary that a defendant should be interested in the subject matter that still may be impleaded as a defendant. Further mis-joinder of a party may not be fatal to a case of the plaintiff. Therefore a burden is caused on the plaintiff to implead all the defendants against whom the plaintiff feels whose presence is required to effectively adjudicate the issues raised.

5.There is yet another issue to be examined namely that the person whose interest might be affected by any order passed by the Court should also be impleaded as defendants. When the Code of Civil Procedure gives such wide latitude for parties to be impleaded as defendants, in a partition suit naturally, before instituting the suit the plaintiffs should know as to whom they should array as defendants.

6.The application in I.A.No.58 of 2017 came up for consideration before the learned Principal District Judge at Namakkal and by order dated 10.10.2018, the said application was dismissed. The learned Principal District Judge had examined the provisions of Order II Rule 2 and Order II Rule 3 of the Code of Civil Procedure stated that the said provisions can be invoked only when two separate reliefs are sought and in this case had stated that the relief of partition has been sought against both with respect to "A" Schedule property and with respect to "B" Schedule property and therefore had refused to grant leave.

7.I would not interfere with the said Order but I would grant permission to the plaintiffs herein to amend the plaint to invoke the relief of partition even with respect to "B" Schedule and leave it to the wisdom of the party and to the Court to decide about the valuation of the suit if "B" Schedule property



is included and the necessary Court Fees to be paid on the same.

8.The Order under revision need not interfered with but liberty is granted to the plaintiffs to include the relief of partition in O.S.No.15 of 2017 itself by filing necessary applications.

9.With the said observations, the Civil Revision Petition is disposed of. Consequently, the connected miscellaneous petition is also closed. No order as to costs.

Sd/-
Assistant Registrar(CO-IX)

//True Copy//

Sub Assistant Registrar

ssi

To

1. The Principal District Judge,
Namakkal.
2. The Sessions (Fast Track Mahila) Court,
Namakkal.

+1cc to Ms.V.Raghavachari, Advocate, S.R.No.34443

+1cc to Ms.S.Senthil, Advocate, S.R.No.34618

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GP(CO)
CT(19/08/2021)