

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.12.2020

PRONOUNCED ON : 15.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRP(PD)No.2448 OF 2017

CMP.No.11555 OF 2016

(Through Video Conferencing)

Bhavani

Petitioner

Vs

1. Ponnammal

2. Sampath

Respondents

Prayer:- This Civil Revision Petition has been filed, under Section 227 of the Constitution of India, against the fair and decreetal order dated 20.02.2017, passed in IA.No.832 of 2016 in OS.No.157 of 2014, by the Sub Court, Cheyyar.

For Petitioner : Mr.P.Mani

For Respondents : Mr.K.G.Senthil Kumar

ORDER

1. This Civil Revision Petition has been filed, against the fair and decreetal order dated 20.02.2017, passed in IA.No.832 of 2016 in OS.No.157 of 2014, by the Sub Court, Cheyyar.
2. The facts of the case, in a nutshell, are that the Plaintiff is the Petitioner and the Defendants are the Respondents. The suit was filed for partition and

separate possession. The Plaintiff has filed the application seeking to include certain properties in the schedule. Since the said application was dismissed, by the impugned order, this Civil Revision Petition has been filed.

3. The learned counsel for the Petitioner has submitted that since some of the properties originally included in the plaint were deleted by wrongly assuming that the said properties were the self acquired properties of the 2nd Defendant and later when she came to know that the same were the joint family properties, the said properties were sought to be included in the present amendment application and that when there is no necessity to produce the documents at the time of seeking amendment and such a necessity would arise only after amendment of the plaint, the impugned order, dismissing the amendment petition, for want of documents is erroneous and hence, this Civil Revision Petition is to be allowed.
4. The learned counsel for the Respondents has submitted that in an earlier application in IA.No.469 of 2015, filed by the Petitioner, the properties were sought to be deleted on the ground that the same were the self acquired properties of the 2nd Defendant and the said application was allowed and accordingly, the properties were deleted, but contrary to the said stand, again, the said properties were now sought to be included on the ground that the said properties were the joint family properties, in the present application, and that only to harass and to protract the proceedings, the present application has been filed and that further without the particulars of the properties sought to be included, the amendment cannot be ordered and

accordingly, this Civil Revision Petition is to be dismissed.

5. This court heard the learned counsel on either side and considered their submissions and also carefully perused the materials placed on record.
6. The suit is of the year 2014. The first amendment application, which was filed in 2015, seeking deletion of certain properties on the ground that the said properties were the properties of the 2nd Defendant, was allowed and accordingly, the said properties were deleted. The present amendment application was made in 2016 for adding those deleted properties, stating that the same were the joint family properties, taking a contrary stand to the earlier stand, which was denied by the Trial Court.
7. In this case, earlier the Petitioner having understood that the properties were that of the 2nd Defendant, sought to delete those properties, which was allowed, but contrary to the same, the Petitioner has now sought to include those properties on the ground that the same are the joint family properties. There is total lack of exercise of due diligence by the petitioner for not bringing the correct facts at the earliest point of time. There is no document to show that the petitioner had made an enquiry in respect of the properties. Therefore, this Court is of the firm view that the earlier application has been made without due enquiry in respect of the properties. The present application has been made contrary to the stand taken in the earlier application. Therefore, the Trial Court is justified in passing the impugned order, dismissing the present amendment application, which warrants no interference by this Court.

A.A.NAKKIRAN, J.

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8. In fine, this Civil Revision Petition is dismissed. No costs. Consequently, the connected MP is closed.

15.02.2021

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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To

1. The Sub Court, Cheyyar

Pre-Delivery Order in
CRP(PD)No.2448 OF 2017



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