

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P (PD).No.3462 of 2018

and

Cmp.No.19408 of 2018

A.Palanisamy

... Petitioner

Versus

1.A.Venkatachalam

2.Kaliammal

3.Kokilambal

4.Duraisamy

5.Subbulakshmi

6.Shanmughasundaram

7.Balagovindasamy

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 11.09.2018 made in I.A.No.473 of 2018 in O.S.No.251 of 2009 on the file of the District Munsif Court, Palladam.

For Petitioner : Mr.Sridharan A.K

For Respondents : Mr.N.Manokaran (for R1)

: No Appearance (for R2, R3 & R5)

: Mr.P.M.Duraiswamy (for R4 & R7)

: No Appearance (for R6)

ORDER

The Civil Revision Petition has been filed challenging the order dated 11.09.2018 in I.A.No.473 of 2018 passed by the Court below dismissing the application seeking amendment of the plaint to include the alternative prayer for partition.

2.The Court below after hearing both parties, dismissed the application. At this juncture, it would be apt to extract the relevant portion hereunder:-

*"6.The petitioner is the plaintiff and had come forward with this application under Order VI Rule 17 of Civil Procedure Code to amend the prayer column of this suit by adding the prayer of an alternative relief of partition. By way of this amendment as to partition the plaintiff is taking a complete new version of his earlier stand as to*

oral partition. The prayer for an alternative relief could be sought for in cases of specific performance suit and when plaintiff already pleads oral partition and bases his entire relief upon the said oral partition he could not now take a entirely different stand by seeking a relief of partition and the said stand is destroying his own earlier case of oral partition. So this amendment seeking a new relief of partition will introduce a new case and changes the entire case of action. It will alter the basic structure of case and as such this new amendment sought for could not be allowed and not at all maintainable in the factual and legal circumstances of the case."

3.It appears that the Court below, after hearing both sides and perusal of the pleadings, come to the conclusion that by allowing the present amendment the basic character and structure of the suit will be changed. The suit was filed for declaration based on the oral partition between the petitioner and the first respondent herein. According to the revision petitioner, A-schedule property of the suit was allotted to the father of the petitioner and the first respondent herein, who got the property from the father of respondents 2 to 7 by way of partition deed dated 03.10.1979. After the demise of the father of the revision petitioner, the revision petitioner and the first respondent divided the property by way of oral partition and enjoying the suit property. Since there was a dispute with regards to the extent of the suit property, the revision petitioner/plaintiff filed a suit for declaration.

4.The first defendant/first respondent herein, who is the contesting party filed a written statement by denying that there was no oral partition entered between them. Therefore, the revision petitioner herein filed the above said application for amendment of the prayer. The Court below, after considering the submission of both the parties and perusal of the documents, dismissed the application stating that by allowing the amendment application, it will change the basic structure and basic character of the suit itself. It had come to the conclusion that the revision petitioner has sought a plea for declaration stating that there was an oral partition between them and he has been enjoying the said suit property and his pleadings are available only to that extent.

5.When such being the case, all of a sudden, by changing the stand that the plaintiff wants to alter the prayer with a plea of oral partition, the Court below stated that the pleadings and the particulars provided are not sufficient to

pass a decree for partition. Therefore, the Court below rejected the application for amendment.

6.A perusal of the application for amending the prayer, no new pleadings have been introduced. Apart from that, the learned counsel for the respondent submitted that the application had been filed, after a period of 7 years i.e, after the filing of a written statement and it was filed only to drag the Court proceedings. Therefore, I do not find any merits in the submissions made by the learned counsel for the revision petitioner and once the pleadings were set up by stating that there was an oral partition and the plaintiff is in possession and enjoyment of the property continuously, thereafter, the petitioner seeking for the alternative relief of partition and permanent injunction is not permissible. Now, the plaintiff try to change his stand completely, certainly, this Court is of the view that it would definitely alter the basic character and basic structure of the suit and the pleadings available in the plaint are not sufficient to provide the relief of the partition. Thus, I am unable to trace any substance in the submission made by the learned counsel appearing for the petitioner. In such view of the matter, there is no merits in the case of the petitioner. Therefore, the Civil Revision Petition is liable to be dismissed. No costs.

7.Accordingly, the Civil Revision Petition is dismissed by confirming the order dated 11.09.2018 made in I.A.No.473 of 2018 in O.S.No.251 of 2009 on the file of the District Munsif Court, Palladam. No costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

The District Munsif,  
Palladam.

Copy to : The Section Officer, V.R.Section,  
High Court of Madras, Chennai.

+1cc to Mr.N.Manokaran, Advocate SR.NO..15682

AKM/27.04.21/3P-4C/

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