



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.07.2021
Pronounced on : 27.09.2021

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P. (MD) .No.768 of 2021
and
C.M.P (MD) No.4185 of 2021

Chinnasamy : Petitioner/1st Respondent/ 1st Respondent
.Vs.

1.Guruvammal :1st Respondent/Petitioner/Appellant
2.Chinnasamy
3.Ramuthai : Respondent 2 & 3/ Respondent 2 & 3/
Respondent 2 & 3

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records pertaining to the Fair Order and Decretal order in I.A.No.440 of 2020 in A.S.No.81 of 2019 on the file of the VI Additional District Court, Madurai dated 24.03.2021 and to set aside the same.

For Petitioner : Mr.R.Gowri Shankar
For Respondents : Mr.V.Meenakshi Sundaram
For R.1
: No Appearance
For RR 2 & 3

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No. 440 of 2020 in A.S.No. 81 of 2019, dated 24.03.2021, on the file of the VI Additional District Court, Madurai, allowing the petition filed under Order 6 Rule 17 of the Code of Civil Procedure.

2. The revision petitioner is the first respondent / 1st defendant. The first respondent, who is the appellant / plaintiff, has filed the above suit in O.S.No.735 of 2008, for partition and allotment of 1/4th share in the suit properties.

3. Admittedly, the plaintiff and the third defendant are the sisters and the first defendant is their brother. The second

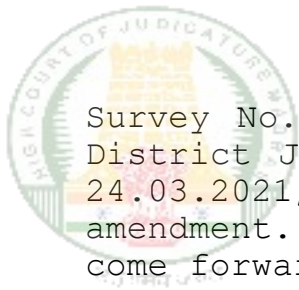


defendant is the son of Sivankalai, who is the brother of the plaintiff and the defendants 1 and 3. The case of the plaintiff is that the suit properties belonged to her father Sethupathy as separate property, that the said Sethupathy had died intestate, that the plaintiff and the defendants have been in joint possession and enjoyment of the suit properties, that though the defendants 1 and 2 had initially agreed for effecting partition, they have been postponing the same on some pretext or the other, that the plaintiff and the third defendant sent a legal notice demanding partition of the suit properties, that though the defendants 1 and 2 have received the legal notice, they have neither sent any reply nor they came forward to effect partition and that since the defendants 1 and 2 now in collusion with the third defendant have been attempting to alienate and encumber the suit properties without the consent and knowledge of the plaintiff, she was constrained to file the above suit for partition.

4. The defence of the first defendant is that the suit properties were the ancestral properties of his father Sethupathy and being the only son to his father Ramalinga Thevar had succeeded to the estate of his father, that during the life time of the said sethupathy, he and his two sons, the first defendant and the deceased Sivankalai had entered into a partition and to confirm the same they have executed a partition deed dated 25.04.1991, that after the death of their father Sethupathy and brother Sivankalai he and the second defendant entered into a registered partition on 27.11.2003, that their father Sethupathy had kept the property situated in Survey No.86/11A, to an extent of 20 cents in Alapalacherry Village, separately and after the death of his wife Guruvammal, the said Sethupathy gave the said property to his daughters, the plaintiff and the third defendant by way of oral partition, that the plaintiff is not entitled to get any share in the suit properties and that therefore the suit is liable to be dismissed.

5. The learned Subordinate Judge, after trial, has rendered findings that the suit properties are the ancestral properties and the same were devolved on the said Sethupathy, that the partition deeds under Exs.B1 and B2, alleged by the first defendant cannot be relied on, as the same does not bind the plaintiff, that the property situated in Survey No.86/11A of Alapalacherry Village, can only be considered as part and parcel of the suit properties belonged to the family of the plaintiff and defendants and that since the said property is not included in the suit, the suit is bad for partial partition and dismissed the suit.

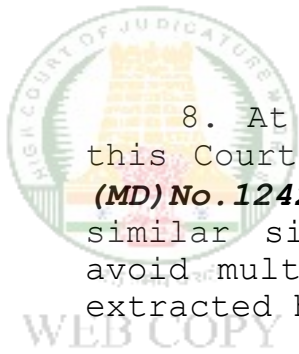
6. Aggrieved by the dismissal of the suit, the plaintiff has preferred an appeal in A.S.No. 81 of 2019 on the file of VI Additional District Court, Madurai and the same is pending. Pending appeal, the plaintiff has filed an application in I.A.No.440 of 2020



Survey No.86/11A at Alapalacherry Village. The learned Additional District Judge, after enquiry, has passed the impugned order dated 24.03.2021, allowing the petition and thereby permitted the proposed amendment. Aggrieved by the said order, the first defendant has come forward with the present Civil Revision Petition.

WEB COPY

7. At the outset, it is pertinent to note that the first defendant in the written statement has nowhere stated that since the property situated at Alapalacherry Village was not included, the suit is bad for partial partition. Moreover, the learned Subordinate Judge has not framed any issue with respect to the alleged plea of partial partition. As already pointed out, the plaintiff has claimed partition and allotment of 1/4th share in the suit properties alleging that the same were owned by her father Sethupathy, but the first defendant has taken a stand that the suit properties are the ancestral properties and that during the life time of his father Sethupathy, there was an oral partition and the same was confirmed by the execution of the partition deed, dated 25.04.1991, and that after the death of his father and brother, himself and his brother's son the second defendant, had entered into a partition deed dated 27.11.2003, and that therefore the plaintiff is not entitled to claim partition in the suit properties. As already pointed out, the first defendant has also taken a stand that after the partition deed dated 25.04.1991, his father Sethupathy had kept the property situated in Survey No.86/11A of Alapalacherry Village, separately and that after the death of his wife Guruvammal, effected an oral partition and gave that property to his two daughters, the plaintiff and the third defendant. But the learned Trial Judge, after rejecting the case of the first defendant with respect to two partition deeds under Exs.B1 and B2, has given a finding that the said property at Alapalacherry Village, has to be treated as the property belonging to the family of the parties and as such the same is available for partition and by holding so, since the said property is not included in the present suit, dismissed the suit only on the ground that the suit is bad for partial partition. According to the learned Counsel for the plaintiff, since the Trial Court has given such a finding for the dismissal of the suit, the plaintiff has no other option but to add the said property as tenth item of the suit properties. The main objection of the first defendant is that though he has filed the written statement as early as on 14.07.2017, the plaintiff has not taken any steps to amend the plaint for including the said property and that after the lapse of more than ten years, he has filed the above petition with ulterior motive and that the nature of the dispute involved in the appeal would get changed, if the amendment is allowed. As already pointed out, the first defendant has not taken any stand in the written statement that the property in Alapalacherry, was also a part of the ancestral property and that the said property which is also available for partition should have been added in the suit.



8. At this juncture, it is necessary to refer the decision of this Court in ***Packiam and another Vs. V. Joseph and another (C.R.P (MD)No.1242 and 1243 of 2014 dated 01.03.2019)***, wherein, in a similar situation, the amendments were ordered to be allowed to avoid multiplicity of the proceedings and the relevant portion is extracted hereunder:

"A suit for partition is different from other suits in which the cause of action for the plaintiff or any one of the sharer who is entitled to a share in the suit property survives and is entitled to pursue his remedy till the properties are divided by metes and bounds, for all the sharers. The trial Court has dismissed the suit mainly on the ground that some of the properties belongs to the parties are not included in the suit schedule and therefore, the suit for partial partition is not maintainable. When the plaintiffs filed an amendment application at the appellate stage, the lower Court dismissed the said application as if the scope of the suit will be enlarged by allowing the petition for amendment by including some of the items. Even before this Court the fact that the two properties which are sought to be included in the schedule are available for partition is not in dispute. In such circumstances, the dismissal of the application is not proper and the parties need not be driven to file yet another suit for partition once again unnecessarily by including the two properties."

9. In the case on hand, the suit was originally filed in the year 2008 and already thirteen years had lapsed. As already pointed out, this Court, in the above decision has observed that the parties need not be driven to file another suit for partition unnecessarily for the properties left out. Moreover, as rightly contended by the learned Counsel for the Plaintiff, no prejudice would be caused to the first defendant, if the proposed amendments are allowed. After amendment, the first defendant is certainly entitled to putforth his additional defence and also to adduce further evidence. Moreover, since the plaintiff's suit was dismissed only on the ground of partial partition, if the proposed amendment is rejected, as rightly observed by the Appellate Court, the plaintiff's interest will be affected seriously.

10. Considering the above, the decision of the learned Appellate Judge in permitting the proposed amendments cannot be found fault with. Consequently, this Court concludes that the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.



11. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also closed.

WEB COPY

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

lr

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The VI Additional District Court,
Madurai.

2.The Section Officer, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-30454[F] dated 28/09/2021)

+1 CC to M/s.R.GOWRISHANKAR, Advocate (SR-30616[F] dated 29/09/2021)

PRE-DELIVERY ORDER MADE IN

C.R.P. (MD) .No.768 of 2021

and

C.M.P(MD)No.4185 of 2021

27.09.2021

GC (05.10.2021) 5P 6C