



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **07.12.2021**

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**
C.R.P. (PD) (MD) Nos.834 and 835 of 2021

and
C.M.P. (MD) No.4482 of 2021

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Saravanakumar ... Petitioner/1st Respondent/Defendant
in both C.R.Ps.,
vs.

Karthigaimala ... Respondent/Petitioner/Plaintiff
in both C.R.Ps.,

COMMON PRAYER:- This Petitions are filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 06.03.2021 passed in I.A.Nos.306 and 305 of 2020 in O.S.No.107 of 2015 on the file of the 5th Additional District Judge, Madurai.

For Petitioner
in both C.R.Ps., : Mr.P.Subbiah Senior Counsel for
Mrs.P.Jessi Jeeva Priya

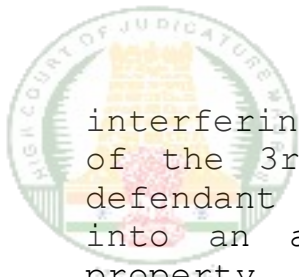
For Respondent
in both C.R.Ps., : Mr.A.V.Arun

COMMON ORDER

The defendant is the revision petitioner in both the Civil Revision Petitions. I.A.No.305 of 2020 in O.S.No.107 of 2015 on the file of the learned 5th Additional District Judge, Madurai, was filed by the plaintiff to reopen the case, which was posted on 03.11.2020 for the reply arguments, after the conclusion of trial. I.A.No.306 of 2020 in O.S.No.107 of 2015 was also filed by the plaintiff for amending the plaint with reference to the description of properties relating to the 1st item of the property by correcting T.S.No.867/142 as T.S.No.867/1 & 2 and to reduce the extent of the 5th and 6th items of property as 5 1/2 cents have been already disposed of. The consequential amendment with reference to the value of the suit was also sought for.

2.The brief facts are as follows:-

3.The plaintiff had filed a suit O.S.No.107 of 2015 on the file of the learned 5th Additional District Judge, Madurai, seeking partition of the plaintiff's half share in the suit
Schedule Property, injunction restraining the defendant from



interfering with the plaintiff's peaceful possession and enjoyment of the 3rd item of property and an injunction restraining the defendant from mortgaging, charging, gifting, selling, entering into an agreement of sale and leasing the suit 1st item of property.

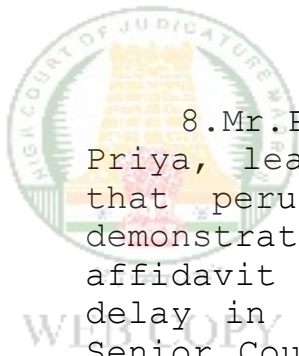
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4.The plaintiff's case is that the property belonged to one Pitchaipillai, who had two sons, Gurusamy and Kutti @ Thirumalaichamy. Gurusamy had one son, G.T.Pandian and Kutti @ Thirumalaichamy had one son, Pitchaipillai. Pandiammal was the wife of Pitchaipillai. The plaintiff and the defendant are their children.

5.The case of the plaintiff is that the properties are the ancestral properties of the plaintiff and the defendant. After the death of their father, the plaintiff's mother, Pandiammal, the plaintiff and the defendant were enjoying the properties without partitioning the same. On 21.11.2012, the plaintiff's mother passed away. Therefore, the plaintiff and the defendant each became entitled to a half share in the suit schedule properties. In the 3rd item of property, there were two houses. One of the houses was rented out by the plaintiff to one Karthikeyan and the other to one Senthilkumar on monthly rent. The rents have been collected by the plaintiff. The 1st item of property is vacant. In items 2 and 4 to 6, the defendant has inducted 13 tenants and he has been enjoying the rent.

6.The plaintiff would submit that for the last two years, the defendant has not been conducting himself properly and was claiming an exclusive right to the same. Therefore, the plaintiff has sought for partition. The plaintiff would submit that he has also entitled to the rent being received by the defendant. A notice was issued on 20.04.2015 by the plaintiff to the tenants asking them to pay the half share to her. Notice was also sent to the defendant calling for partition. However, on 05.05.2015, the defendant had sent a reply containing false allegations. Since the defendant was not cooperating, the plaintiff had come forward with the suit. The defendant had filed a written statement denying the above statements.

7.The parties had gone to trial on 28.08.2019, the evidence was ultimately closed on 02.01.2020, the arguments on either side were completed and the matter was posted on 03.11.2020 for the reply arguments of the plaintiff. At this juncture, the plaintiff had filed two interlocutory applications to reopen the case and to amend the plaint, which have been ordered. It is these orders that are the subject matter of challenge in the above Civil Revision Petitions.



8.Mr.P.Subbiah, learned Senior Counsel for Mrs.P.Jessi Jeeva Priya, learned counsel appearing for the petitioner would submit that perusal of the application for amendment would clearly demonstrate that no reason whatsoever has been provided in the affidavit filed in support of the amendment application for the delay in taking out the application for amendment. The learned Senior Counsel would further submit that as regards the amendment with reference to items 5 and 6, the said amendment is not an amendment, but an abandonment of claim in respect of 5th and 6th items of properties, which cannot be done by way of an Order VI Rule 17 application, but can only be done through an application under the provisions of Order XXIII Rule 3 of the Code of Civil Procedure. Therefore, the orders of the learned Judge without taking into consideration of the above provisions are liable to be set aside. The learned Senior Counsel would attack the reopen petition by contending that a perusal of the affidavit filed in support of the petition would set out that the reopen was necessary in order to implead the third parties to the proceedings.

9.The learned Senior Counsel would rely on the judgments of the Hon'ble Supreme Court in the case of **Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and others** reported in (2009) 10 Supreme Court Cases 84 and the case of **M.Revanna Vs. Anjanamma (dead) by legal representatives and others** reported in (2019) 4 Supreme Court Cases 332. He would submit that the order passed by the learned Judge is a mechanical one, for which proposition he would rely on the judgment of the Hon'ble Supreme Court in the case of **N.Murali Vs. International Ocean Institute, represented by its Executive Director, IIT Campus, Chennai and others** reported in (2018) 5 CTC 315. He would therefore submit that both the impugned orders deserve to be set aside.

10.Per contra, Mr.A.V.Arun, learned counsel appearing on behalf of the respondent/plaintiff would contend that the amendment does not seek to introduce any new case. It is only a typographical error and further, the plaintiff has not attempted to increase the extent of the suit properties. He would further submit that along with the two applications, the implead application had also been filed and that the affidavit filed in support of the reopen petition would make reference to the implead petition. He would further submit that the amendment was necessitated only on account of the oral evidence of P.W1. He would submit that in the written statement the defendant had taken a stand that the predecessor in title of the defendant had sold out large chunks of land and retained only a smaller extent. Despite being aware of the sale, the plaintiff has included even these properties, which had been sold out.



11.P.W1 in his cross-examination would submit that Kutti @ Thirumalaichamy had three wives and the son of the third wife of Thirumalaichamy, Thayammal, is the father of P.W1, Pitchaipillai. The 1st and 2nd wives of Kutti @ Thirumalaichamy had only daughters. Their names have not been mentioned in the genealogy. P.W1 has admitted that they have not been impleaded as parties. He had in fact gone on to state that these parties have to take steps to work out their remedies and this was also the reason for filing the reopen petition to implead the parties.

12.The learned counsel for the respondent in support of his contentions would rely on the following judgments:-

i) The judgments of Hon'ble Supreme Court in the case of **T.N.Alloy Foundry Co.Ltd., Vs. T.N.Electricity Board and others** reported in (2004) 3 Supreme Court Cases 392, the case of **Varun Pahwa Vs. Renu Chaudhary** reported in (2019) 15 SCC 628 and the case of **South Konkan Distilleries and another Vs. Prabhakar Gajanan Nair and others** reported in AIR 2009 Supreme Court 1177.

ii) The order of this Court in the case of **Ponnusamy (died), Settu @ Krishnasamy Vs. Arumugam (died), Nallappan and others** reported in 2019 (6) CTC 628.

13.Though extensive arguments had been advanced by the parties, on overall consideration of the above Civil Revision Petitions, it is seen that I.A.No.306 of 2020 is filed to amend the description of properties, which appears to be a typographical error and the amendment is not likely to cause any prejudice to the defendant or prolong the litigation. Therefore, the order passed in I.A.No.306 of 2020 in O.S.No.107 of 2015 on the file of the learned 5th Additional District Judge, Madurai dated 06.03.2021 is hereby confirmed and C.R.P.(MD) No.834 of 2021 stands dismissed.

14.As regards I.A.No.305 of 2020 in O.S.No.107 of 2015, a perusal of the affidavit would clearly show that the petition has been filed only to implead the parties to the suit. The petition to implead the parties has not been taken up for consideration by the learned 5th Additional District Judge, Madurai and steps have not been taken in this regard by the respondent as well.

15.The defendant in his written statement has raised a defense that proper and necessary parties have not been impleaded in the suit and therefore, the suit has to be set aside. This written statement had been filed on 03.11.2015 and no steps have been taken to rectify the said defect till the arguments had been concluded in the suit. Further, the suit is at the stage of reply arguments ie., the suit has reached its fag end. At this juncture,



applications of this nature would only lead to protracting the proceedings and this Court should not be a party to the same. Consequently, the order passed in I.A.No.305 of 2020 in O.S.No.107 of 2015 on the file of the learned 5th Additional District Judge, Madurai, dated 06.03.2021 is set aside and C.R.P.(MD) No.835 of 2021 is allowed. The learned 5th Additional District Judge, Madurai is directed to dispose of the proceedings within a period of one month from the date of receipt of a copy of this order.

16.In fine, C.R.P.(MD) No.834 of 2021 stands dismissed and C.R.P.(MD) No.835 of 2021 stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

The 5th Additional District Judge,
Madurai.

COPY TO

The Registrar(Judicial),
Madurai Bench of Madras High Court,
Madurai.

**C.R.P. (PD) (MD) Nos.834 and 835 of 2021
07.12.2021**

NSN(CO)

SB(19.01.2022) 5P 3C