



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.12.2021

CORAM :

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (MD) No.1166 of 2021

and

C.M.P. (MD) No.6773 of 2021

WEB COPY

Samuthiram Nadar

... Petitioner/Petitioner/
Plaintiff

vs.

1.Ramar
2.Vallikani
3.Bakiyam
4.Sudalaikani
5.Pappa
6.Minor Manikandan
7.Minor Chelladurai

... Respondents/Respondents/
Defendants

(Minor respondents represented through their
natural guardian and mother the Fifth Respondent)

PRAYER:- This Petition is filed under Article 227 of the Constitution of India, to call for the records and set aside the fair and executable order dated 08.04.2021 passed in the application in I.A.No.8 of 2021 in O.S.No.530 of 2014 on the file of the learned Additional District Munsif, Tenkasi.

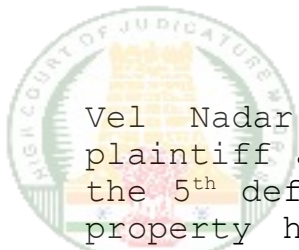
For Petitioner : Mr.J.Barathan
For Respondents : Mr.R.J.Karthick

ORDER

The plaintiff, whose application to amend the plaint had been rejected, has approached this Court by way of this Civil Revision Petition.

2.The facts in brief are as follows and the parties are also referred to in the same ranking as before the trial Court.

3.The plaintiff had filed a suit O.S.No.530 of 2014 now pending on the file of the learned Additional District Munsif, Tenkasi for partition of his 1/6th share in the 1st item of suit property and 1/4th share in the 2nd item of suit property. The case of the plaintiff was that the 1st item of suit property belonged to one Vel Nadar, who is the father of the plaintiff and the defendants 1 to 4, father-in-law of the 5th defendant and the grandfather of the defendants 6 and 7. The 3rd item of property was purchased by the said Vel Nadar under a sale deed dated 23.12.1996. On 05.05.2002,



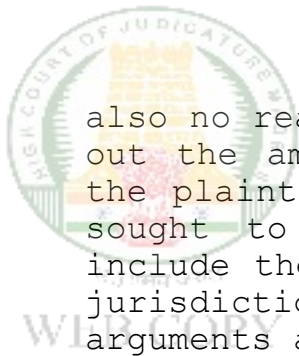
Vel Nadar died leaving behind him surviving his children/the plaintiff and the defendants 1 to 4 and Kalanchiyam, the husband of the 5th defendant and father of defendants 6 and 7. The 2nd item of property has been jointly purchased by all the four sons of Vel Nadar as a joint Hindu family under a sale deed dated 18.05.2006. Kalanchiyam was away from the suit village, when the 2nd item of property was purchased and therefore, he was not included in the purchase. Therefore, a family arrangement came to be entered into on 09.07.2008 in respect of the 2nd item of suit property. On 22.05.2009, Kalanchiyam passed away leaving behind him surviving defendants 5 to 7. Since the defendants were not coming forward for partition, the plaintiff had come forward to institute the above suit. The suit 1st item of property consisted of 3 items and the 2nd item of suit property consisted of 19 items.

4.The defendants had filed their written statement *inter alia* stating that the plaintiff is not the son of Vel Nadar. The defendants 1 to 4 and the husband of the 5th defendant and the father of the defendants 6 and 7 are the only children of late Vel Nadar. The plaintiff is born to one Aathimuthu Nadar and Seeniammal. The plaintiff's mother is related to Vel Nadar through his mother. Since the plaintiff's father, Aathimuthu, had died at very young age, the plaintiff and his brother, Ramasamy Nadar, were being taken care of by Vel Nadar and therefore, the plaintiff and his brother were only foster sons of Vel Nadar. The defendants had also stated that they were ready to grant 1/4th share in the suit 2nd item of property, but not in the 1st item of property, since the plaintiff is not a son of Vel Nadar.

5.The defendants would submit that the suit was barred by non-joinder of necessary parties, since they had not included the other foster son, Ramasamy Nadar, who passed away in a road accident by bringing his legal heirs on record. The 1st item of property had been partitioned on 21.11.2014 and the suit had been filed suppressing these facts, since parties have started to enjoy their respective shares. The plaintiff had suppressed the material facts in filing the suit.

6.The oral evidence in the suit commenced on 05.12.2019 and had also been concluded. The matter was thereafter posted for arguments to 08.02.2021, when the plaintiff took adjournments and had thereafter come forward with the amendment petition stating that he had omitted to include certain properties and since he was illiterate and has no knowledge about the document, the omission had occurred and therefore, it was necessary that the amendment has to be carried out and it is also his case that the amendment is not inconsistent with the original pleading and the defendants would not be put to hardship.

7.The defendants had filed a detailed counter *inter alia* <https://hcservices.ecourts.gov.in/hcservices/> concerning the not only was the amendment application belated but



also no reasons were given for the amendment and the delay in taking out the amendment. Further, the defendants would also submit that the plaintiff had not given the value of the properties, which are sought to be included, since if the plaintiff is permitted to include the properties, then the value of the suit would exceed the jurisdiction of the Court. The suit had reached the stage of arguments and therefore, the amendment should be dismissed.

8.The learned Additional District Munsif, Tenkasi, by his order dated 08.04.2021 had dismissed the application stating that the suit had been posted for arguments and that the application is totally bereft of details. Challenging the same, the plaintiff is before this Court.

9.Heard the learned counsels on either side.

10.Admittedly the suit is now at the stage of arguments. The affidavit, which is filed in support of the said petition, does not contain any details whatsoever with reference to the reason for the omission, the date of the petitioner/plaintiff coming into the knowledge about the existence of the properties and the reason for such a huge delay. The counter of the defendants would indicate that the value of the suit would go up, as a result of which, the learned Additional District Munsif, Tenkasi, may loose his jurisdiction over the suit. If the amendment is ordered, it would cause great prejudice to the defendants. That apart, the amendment is a post trial amendment.

11.In these circumstance, the order of the learned Additional District Munsif, Tenkasi passed in I.A.No.8 of 2021 in O.S.No.530 of 2014 dated 08.04.2021 cannot be found fault with and accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

The Additional District Munsif,
Tenkasi.

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-38190[F]
dated 10/12/2021)

C.R.P. (MD) No.1166 of 2021
08.12.2021

CK (CO)

GC (28.01.2022) 4P 3C