



C.R.P.(PD).No.267 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 08.02.2022

C O R A M

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No.267 of 2022
and C.M.P.No.1309 of 2022

A. Palanisamy

...Petitioner/Plaintiff/Petitioner

-V-

1.A. Venkatachalam

2.R. Kaliammal

3.R. Kokilambal

4.R.Djuraismy

5.G.Subbulakshmi

6.R. Shanmughasundaram

7.R.Balagovindasamy

...Respondents/Defendants/Respondents

Prayer: Petition filed under Article 227 of the Constitution of India against the fair and Decreetal order dated 17.12.2021 passed in I.A.No.193 of 2021 in O.S.No.251 of 2009 on the file of the learned District Munsif, Palladam.

For Petitioner : Mr.K.Govi Ganesan

For Respondents : Mr.A.Thiyagarajan
for R2 to R7



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ORDER

The plaintiff is the revision petitioner challenging the dismissal of the application filed for amending the Plaint in I.A.No.193 of 2021 in O.S.No.251 of 2009 on the file of the learned District Munsif, Palladam.

2.The facts in brief are as follows:

The revision petitioner had filed the suit O.S.No.251 of 2009, seeking the relief of declaration and permanent injunction in respect of the suit schedule property. The case of the plaintiff was that the property belonged to Avinashiappa Gounder and Ramasamy Gounder, who are the sons of Venkitachala Gounder by virtue of a Sale Deed dated 13.04.1948. Under this Sale Deed, the suit property was purchased along with other properties. Thereafter, on 03.10.1978, the brothers had partitioned the schedule mentioned properties under which “A” Schedule property was allotted to



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Avinashiappa Gounder, and “B” schedule property was allotted to Ramasamy Gounder. After the purchase, they have been in possession and enjoyment of their respective shares and exercising their rights as absolute owner. The land in S.F.No.374/1A of Karaipudur Village, measuring a total extent of 8.94 acres was divided into two portions under the Partition Deed, measuring an extent of 4.42 acres each and an extent of 10 cents was left for the common cart track. This cart track has been described as Item No.I of the suit schedule property. Further, as per the Partition Deed, the lands comprised in Survey No.375/1B of Karipudur Village, measuring 10.95 acres was equally divided into East and West portions, measuring 5.37 ½ acres each and a total extent of 20 cents with a common well and its appurtenances were left in common. This is described as a suit 2nd item of the property. The suit 1st item of the property (pathway) and the suit 2nd item of property (land with a common well) was enjoyed by the two brothers in common. On 13.03.1997, Avinashiappa Gounder died intestate leaving behind the



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plaintiff and the 1st defendant as his legal heirs. Ramasamy Gounder had died a year prior leaving behind the defendants 2 to 7 as his legal heirs and they had inherited the property of Ramasamy. Thereafter, the plaintiff and the 1st defendant had orally partitioned the property belonging to them and under the oral partition, the plaintiff became entitled to 1.75 acres and 46 cents, total measuring 2.21 acres in S.F.No.374/1A of Karaipudur Village and a 1/4th right in the common cart track. Further, an extent of 2.63 acres in Survey No.371/1B with a half share in the common cart track was left out by the plaintiff and 1st defendant under the oral partition. It appears that the 1st defendant had transferred his 1/4th right in the 20 cents of land with well under a Sale Deed dated 20.07.1989 which is described as Item - III in the suit schedule property.

3.Likewise, the plaintiff had transferred an extent of 1400 sq.ft out of 47 cents of Item 1 of the suit schedule property to one Jayapradhan and another under a Sale Deed dated 25.02.2008. The



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remaining extent of 2.18 acres vested with the petitioner/plaintiff.

During the re-survey, the revenue official had committed a mistake in mutating the revenue records, contrary to the Partition Deed dated 03.10.1979 and the oral partition between the plaintiff and his brother the 1st defendant. Therefore, the order was set aside by the RDO Tiruppur, and the Tahsildar was directed to set aside the impugned order and to record the correct extent.

4.Taking advantage of this error in the F.M.B. and other revenue records, the defendant attempted to interfere in the possession and enjoyment of the suit property by the plaintiff. Therefore, they have constrained to come forward with this suit.

5.A detailed Written Statement was filed *inter alia* denying the claim of the plaintiff. The defendants had denied the oral partition between the plaintiff and the 1st defendant. The defendants had stated as to how the property was divided in the partition in the year



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1978. The defendants had also stated that taking into account the enjoyment of the properties, the revenue records had been mutated.

The properties were being enjoyed to the same extent as it was partitioned and where one co-owner was allotted a lesser extent in one Survey Number the same had been compensated in other Survey Number and *vice versa*. The same has been accepted by Avinashiappa Gounder and Ramasamy Gounder. The plaintiff, at his juncture, cannot question the sub division and the allocation of Survey Numbers.

6. When the suit was posted for trial the petitioner has come forward with the impugned petition seeking to amend the Plaint. In the affidavit filed in support of the said petition, the petitioner would submit that they are entitled to seek possession of 33 cents in Survey No.375/1, since the respondents 4, 6 and 7 have admitted in their Written Statement that they are in possession of an extent of 5.71 acres instead of 5.38 acres and further, executing the order would be



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made easier if the respondents are made to deliver possession of the 0.33 acres situate near the Western boundary of S.F.No.375/1.

7.The amendment was with reference to an addition of pleadings and also for seeking an additional relief directing the defendants to surrender possession of the property described in Item 4 of the suit property. A change in the description of the properties in the schedule by including one more item as Item 4. The respondents had strongly objected the said amendment. The learned District Munsif, Palladam by his order dated 17.12.2021 was pleased to dismiss the said petition.

8.The learned Judge had observed that no reason whatsoever has been given by the plaintiff for seeking amendment at such a late point of time, especially, when it is a post trial amendment sought to be introduced after the cross examination of P.W.1. The petition has been filed 12 years after the filing of the main suit. Further, even in the Written Statement filed 12 years ago the respondents had set out



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in detail the extent in their enjoyment and the plaintiff had not come forward at that point of time to amend the Plaint, therefore, the present petition is highly belated. Challenging the same, the revision petitioner is before this Court.

9. Heard the learned counsel appearing for the petitioner and perused the papers.

10. The amendment seeks to introduce not only a new prayer but also a new property besides new pleadings to support the new relief. The plaintiff by filing this amendment had sought for recovery of possession of the 4th item of the property which included the 4th item. Even as early as in the year 2009, the defendants 4, 6 and 7 have set out the details of the share in the enjoyment of each person and had clearly and categorically described the property that they were in possession of the property. The Written Statement has been filed on 12.10.2009 and the present petition to amend the prayer to



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include the relief of recovery of possession has been filed only in the year 2021, nearly 12 years after the defence. The learned District Munsif, Palladam, has rightly dismissed the said application and I do not find any reason to interfere with the same.

This Civil Revision Petition is dismissed. No Costs. Consequently, connected Civil Miscellaneous Petition is closed.

08.02.2022

Internet : Yes/No
Index : Yes/No
Speaking / Non-Speaking
mps

To

The District Munsif,
Palladam.



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P.T. ASHA, J,

mps

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