



C.R.P.(NPD).No.2713 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :	29.03.2022
PRONOUNCED ON :	09.06.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.(NPD).No.2713 of 2015
and M.P.No.1 of 2015

Narayanamma(Died)
1) Muniswamiyappa
2) Nagaraj
3) Srinivasan

... Petitioners/ Petitioners/
Plaintiffs

Vs

1) Krishnappa
2) Sharathamma
3) Chandramma
4) Babu
5) Sivakumar
6) Lalitha
7) Manjula
8) Kamalamma
9) Anusuya

... Respondents/ Respondents/
Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order in I.A.No.7 of 2014 in A.S.No.4 of 2012,



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on the file of Additional District and Sessions Judge, Hosur dated 17.03.2015.

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For petitioners	...	Mr.V.Raghavachari
For respondents	...	Mr.A.Arvind Athithan For Mr.T.Raghavan

ORDER

Aggrieved against the dismissal of the decretal order made in I.A.No.7 of 2014 in A.S.No.4 of 2012, on the file of Additional District and Sessions Judge, Hosur dated 17.03.2015, the petitioners have preferred the present revision before this Court.

2. Brief facts which are necessary for the disposal of this Civil Revision Petition are as follows:-

2.1. The petitioners/ plaintiffs 1 to 5 (1st and 5th plaintiffs died) have filed a suit for partition before the trial court in O.S.No.122/2010 and the same was dismissed vide judgement, dated 30-8-2011. During the pendency of the suit, the defendants D1 to D3 and D5 died and the legal representatives of the deceased third and fifth defendants were impleaded.



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2.2. Challenging the decree and judgement of the trial court, an appeal was filed by the plaintiffs in A.S.No.4 of 2012. The first plaintiff/first appellant died on 12-3-2012. The plaintiffs /appellants 2 to 4 were recognised as legal representatives of the deceased first appellant. Pending appeal in A.S.No.4 of 2012, the first appellant filed an application under Order VI Rule 17 of the Civil Procedure Code in I.A.No.16 of 2013, seeking to amend the plaint as well as the grounds of appeal and the same was dismissed on 17.03.2015 Challenging the dismissal of the same, the present Civil Revision Petition has been filed.

3. Perusal of the order passed by the first Appellate Court reveals the following four grounds for the dismissal of the application.

- (i) The proposed amendment is with reference to description of the property and that the proposed amendment would interview a new case: that the amendment would enable the plaintiff to fill up the lacunae;
- (ii) The amendment, if allowed, would defeat the advantage that has accrued to the defendants;
- (iii) The case is pending from the year 1992 onwards *and*



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(iv) The proposed amendment will cause serious prejudice to the defendants.

4. Whether these grounds are justified or not, is the issue to be considered in the Civil Revision Petition. In the application for amendment, the appellants have stated that the description of property, as given by the plaintiffs in the plaint, is not disputed by the defendants, but the trial court has commented upon non-furnishing of boundaries to the property.

5. The learned counsel for the appellants pointed out that there is no dispute regarding identification of the property and in fact, mere reading of the boundaries in the document already filed, would be sufficient to prove the identity of the property.

6. Learned counsel for the respondents would submit that the reasoning given by the first Appellate Court is perfectly justified and there are no grounds to allow the application for amendment.



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7. Heard the learned counsel for the petitioners and the learned counsel for the respondents and perused the records available before this Court.

8. No doubt, the suit for partition is pending for years together. Admitting the plaintiffs to effect amendment would not be in the interest of justice at this stage. However, no prejudice could be caused to the defendants, if the Court is able to get the proof from the document which is already available. Therefore, this Court feels it appropriate to dispose of the civil revision petition with the observation that the first Appellate Court while hearing the appeal shall look into the description of property, as given in the documents marked, and if it is enlightening, to consider the same and pass orders on merits.

9. With this observation, the Civil Revision Petition is dismissed. No costs. Consequently the connected Miscellaneous Petition is closed.

09.06.2022

Index : Yes/No
Internet : Yes/No
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J.NISHA BANU, J.,

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To:

The Additional District and Sessions Judge,
Hosur.

Order made in
C.R.P.(NPD).No.2713 of 2015

Dated:
09.06.2022