



CRP.Nos.112 & 113 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.03.2022

DELIVERED ON : 08.06.2022

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.(PD)Nos.112 & 113 of 2016

Mohan

... Petitioner in both the CRPs

vs.

1.A.K.Ramalingam,
S/o Kulandhaivelu

Kulanthai Velu (Died)

2. Rajasekaran,
S/o Kulandhaivelu

3. Sivashankar,
S/o Kulandhaivelu

4. K.Natarajan,
S/o Kulandhaivelu

5. K.Baskaran,
S/o Kulandhaivelu

6. K.Ravichandran,
S/o Kulandhaivelu

7. Gomathi,
D/o Kulandhaivelu

8. Kalaivaanan,
S/o Thangavelu



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9. Kuppusamy,
S/o Ramasamy

10. R.Natarajan,
S/o Ramasamy

11. Kaliyamoorthy,
S/o Ramasamy

12. Jeyakumar,
S/o Veerasamy

13. Vijayakumar,
S/o Sadagopa Pillai

14. Rajasekharan
S/o Sadagopa Pillai

15. Kannammal,
W/o Velayutham

16. Kamsala,
W/o Kannan

17. Banumathi,
W/o Sokku

18. Pookolam,
S/o Rengan

Sivaraman (Died)
S/o Krishnan

19. Kuppammal,
W/o Palaniyanndi Mudhaliar

Thangam Ammal (Died)
W/o Kulandaivelu Mudaliar



20. Sundarajan,
S/o Sivaraman

21. Soundarrajan,
S/o Sivaraman

22. Chandrasekharan,
S/o Sivaraman

23. Shankar,
S/o Sivaraman

R2 to R22 set exparte in lower Court. ... Respondents in both the CRPs.

Prayer : Civil Revision Petitions filed under Article 227 of the Constitution of India, against the order dated 18.04.2015 made in I.A.Nos.160 & 161 of 2013 in O.S.No.28 of 2011 on the file of Sub-Court, Chidambaram.

For petitioner
in both the CRPs : Mr.S.Sadasharam

For respondents
for R1
in both the CRPs : Mr.A.Muthukumar

COMMON ORDER

These civil revision petitions are filed by the 7th defendant in a suit for partition. Pending suit, an application in I.A.No.160 of 2013 was filed by the 7th defendant, seeking to implead the plaintiff/1st respondent's wife, Sivakamasundari as the 27th defendant in the suit and he has also filed



another application in I.A.No.161 of 2013 seeking to include the house property standing in the name of the plaintiff/1st respondent's wife to the plaint schedule. Aggrieved over the dismissal order passed in both the I.As, these Civil Revision Petitions are filed by the 7th defendant.

2. The plaintiff was employed as a lecturer in the Annamalai University and later, he became as Professor and out of his income and the sale proceeds of his wife's jewels, he purchased a house in the name of his wife in Mariappan Nagar, Chidambaram. According to him, the said property is not a joint family property and it exclusively belongs to his wife. All these averments have been stated in the plaint itself. After service of summons, the defendants, neither claimed the share in the property of the plaintiff nor made any claim before any Court of law. After nine years from the filing of the suit, the 7th defendant had filed these two applications viz., I.A.Nos.160 and 161 of 2013, seeking to implead the 1st respondent's wife, Sivakamasundari as party defendant in the suit and to include the house property standing in the name of the 1st respondent's wife to the plaint schedule respectively stating that the said property is also a joint family property and it should be included for partition in the suit.

3. The learned Subordinate Judge, on considering the submissions



made on both sides, dismissed both the applications. Hence, these civil revision petitions before this Court.

4. Originally, when the Civil Revision Petitions came up for hearing on 08.03.2019, it was dismissed as infructuous, since the revision petitioner did not comply with the condition imposed while setting aside the exparte order before the trial Court and liberty was granted to the revision petitioner to revive it after the exparte decree is set aside. Now, the petitioner has complied with the condition and the exparte decree was set aside, thereby the civil revision petitions are also restored to file.

5. The learned counsel for the revision petitioner submits that the suit is not maintainable on the ground of non-joinder of necessary parties, as the property sought to be included by way of amendment, was purchased from and out of joint family income and hence, the same ought to have been included in the suit. Learned counsel would further that there is no impediment for inclusion of the property mentioned in I.A. 161 of 2013 and there is also no impediment for impleading the plaintiff/1st respondent's wife in the suit. He would further submit that the trial has just commenced and the petition for amendment and impleading ought to be allowed, failing which, the parties will be deprived of their opportunity to defend their case. He would further submit that the facts



stated in the above applications were already raised as a defence in the written statement and hence, no prejudice would be caused to the plaintiff/1st respondent herein if the applications are allowed. Hence, he would pray that these civil revision petitions may be allowed.

6. On the contrary, the learned counsel appearing for the plaintiff/1st respondent would submit that the property mentioned in the I.A.No.161/2013 does not belong to the joint family property and moreover, the suit was filed in the year 2004 and the revision petitioner/7th defendant filed I.A.No.161 of 2013 after nine years of the filing of the suit and that too, at part heard stage. Learned counsel would further submit that the only remedy available to the revision petitioner/7th defendant is to file a separate suit for partition by including the said property and hence, prays for dismissal of the above revisions.

7. Heard the learned counsel for the petitioner and the learned counsel appearing for the 1st respondent and perused the materials available on records.

8. The suit was originally filed before the Additional District Court, Cuddalore, for partition in O.S.No.136 of 2004. Later, the suit was transferred to the file of Additional District Court, II, Chidambaram and renumbered as O.S.No.7 of 2005 on account of the establishment of the



latter court. Again, the suit was transferred on account of enhancement of pecuniary jurisdiction to Sub-Court, Chidambaram and renumbered as O.S.No.28 of 2011. Thus, the suit is pending from 2004. Barring the 7th defendant/petitioner herein all the other defendants were set exparte originally.

9. Perusal of the records would clearly show that the above I.As have been taken out after 9 years from the filing of the suit. The only question to be decided in these Civil Revision Petitions is that whether after 9 years, inspite of clearly mentioning about the status of the above property in the suit itself that it exclusively belongs to the plaintiff's wife, purchased from his income as a professor and the sale proceedings of his wife's jewels, the I.As filed nearly after a period of 9 years will clearly show that the above applications have been filed only to protract the proceedings in one way or the other. Moreover, addition of the parties would depend upon the judicial discretion which has to be exercised, in view of the facts and circumstances of a particular case.

10. It is pertinent to note that the above I.As have been filed when the suit was in part heard stage and after 9 years from the filing of the suit which clearly shows that the petitioner herein is adopting dilatory tactics to drag on the proceedings. Therefore, this Court is of the view



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that the petitioner has come forward with the applications without valid ground to make her as necessary and proper party. Only to drag on the proceedings the petitioner has filed the said applications. Hence, this Court is not inclined to entertain the present civil revision petitions.

11. Accordingly, the Civil Revisions Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index :yes/No
Speaking /Non speaking order
vsi

08.06.2022

To

The Sub-Court, Chidambaram.



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J.NISHA BANU, J.

vsi

PRE-DELIVERY ORDER IN
C.R.P.(PD)Nos.112 & 113 of 2016

08.06.2022