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C.R.P(PD)No.1122 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>01.03.2022</i>
<i>Pronounced on</i>	<i>08.03.2022</i>

Coram

The Honourable Mr.Justice J.SATHYA NARAYANA PRASAD

**C.R.P(PD)No.1122 of 2016
and C.M.P.No.6165 of 2016**

Mr.Baskaran

...Petitioner

Versus

1.Mrs.Santha
2.Gowri
3.Gomathi
4.Sumathi
5.Lakshmanan
6.Mrs.Santha
7.Mrs.Anusuya
8.Mrs.Mallika
9.Venkathachalapathy

...Respondents

This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the order and decreetal order dated 19.01.2016 made in I.A.No.199/2015 in O.S.No.49 of 2012 on the file of Subordinate Judge, Tiruvarur.



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For Petitioner : Mr.J.Nandagopal
For Respondents – 1 to 5 : Mr.S.Sounthar
Respondents – 6 to 9 : No Appearance

ORDER

This Civil Revision Petition has been filed by the petitioner challenging the fair and decreetal order passed by the learned Subordinate Judge, Tiruvarur in I.A.No.199 of 2015 in O.S.No.49 of 2012 dated 19.01.2016, dismissing the Interlocutory Application filed by him.

2. Heard Mr.J.Nandagopal, learned counsel for the petitioner and Mr.S.Sounthar, learned counsel appearing for the respondents 1 to 5. None appeared on behalf of the respondents 6 to 9.

3. The petitioner herein is the second defendant in the suit. The respondents 1 to 5 herein are the plaintiffs and the respondents 6 to 9 herein are the defendants 1, 3, 4 & 5 in the suit.



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4. The learned counsel for the petitioner submitted that the petitioner/second defendant has filed the suit in O.S.No.49 of 2012 before the Sub Court, Tiruvarur, for partition. After the filing of the suit, on 29.10.2012, the petitioner/second defendant has filed his written statement, denying the averments made by the respondents 1 to 5/plaintiffs in the plaint.

4.1. While the suit is pending, the petitioner/second defendant has filed an Interlocutory Application in I.A.No.199 of 2015 under Order VI Rule 16 & 17 r/w. Section 151 of C.P.C, seeking to amend the plaint by including a property in the suit schedule. The property which was sought to be included is an ancestral property. The trial of the suit has already been commenced and on the side of the defendants, D.W.1 was also examined by the trial Court.

4.2. The petitioner/second defendant has filed an affidavit in support of the aforesaid Interlocutory Application, in which, he has stated that at the time of filing the suit, the respondents 1 to 5/plaintiffs have mistakenly left



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out the property which was ought to be included in the suit schedule and

now only, he came to know about the existence of such property.

Therefore, he has filed the said amendment application for including the said property in the suit schedule. He further stated in his affidavit that he and his father's younger brother are entitled to 1/10th share in the suit schedule property which is mentioned in I.A.No.199 of 2015. The Chitta and Adangal relating to the said property were also filed along with the amendment application.

5. The learned counsel appearing for the respondents 1 to 5/plaintiffs submitted that four exhibits were marked on the side of the plaintiffs before the trial Court, which are Chitta (Ex.P1), Adangal Copies (Ex.P2) and Encumbrance Certificates (Ex.P3 & Ex.P4). He further submitted that only on the basis of the aforesaid documents, it cannot be construed that the property mentioned in the amendment application is in existence.

6. Further, he submitted that the pleadings cannot be amended once the trial has commenced. In this case, the trial has already commenced and



D.W.1 was also examined. In the event of amending the schedule of property in the plaint, it will enhance the value of the property. Originally, the suit schedule property was valued as Rs.7,34,400/-, but, the petitioner/second defendant wanted to delete the same and include the value of the property as Rs.21,28,400/- and also add one more property in the schedule of the plaint.

7. In the event of amending the value of the suit property, the plaint has to be returned and fresh trial has to be commenced in the District Sessions Court, Tiruvarur, because, the pecuniary jurisdiction of the Sub Court is only Rs.10,00,000/-. Now, if the aforesaid amendment application filed by the petitioner/second defendant is allowed, then the value of the suit property will exceed the pecuniary jurisdiction of the Sub Court.

8. On perusing the materials available on record, it is crystal clear and evident that the application seeking to amend the value of the suit schedule property and to include one more property in the schedule of the property has been filed by the petitioner/second defendant only after the



trial has commenced and on the side of the defendants, D.W.1 was also examined as a witness by the trial Court.

9. It is a well settled law that the pleadings cannot be amended after the commencement of the trial. It is pertinent to extract Order VI Rule 17 of C.P.C hereinbelow:

“17. Amendment of pleadings – The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

From a careful reading of the above provision, it is seen that no application for amendment shall be allowed after the trial has commenced. In the present case, the trial Court could not come to a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial.



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10. The reason adduced by the petitioner/second defendant is that at the time of filing of the suit, he did not notice the omission of a portion of the property which was ought to be included in the schedule of the suit property cannot be accepted. Also, the petitioner/second defendant failed to satisfy the condition stipulated in the proviso to Order VI Rule 17 of C.P.C that unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. But, in this case, no reason has been adduced by the petitioner/second defendant to satisfy the Court to come to such a conclusion.

11. The trial Court after taken into consideration of the above facts and circumstances of the case, has rightly dismissed the application filed by the petitioner/second defendant for amending the schedule of property, with a prayer to add one more property to it and increasing the value of the suit property.

Hence, for the foregoing reasons, I do not find any ground to interfere with the order passed by the trial Court.



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12. In the result, this Civil Revision Petition is dismissed and the fair and decreetal order passed by the learned Subordinate Judge, Tiruvarur in I.A.No.199 of 2015 in O.S.No.49 of 2012 dated 19.01.2016 is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

08.03.2022

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Index : Yes/No

Speaking Order (or) Non-Speaking Order



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To

The Subordinate Judge,
Tiruvarur.



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J.SATHYA NARAYANA PRASAD, J.

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Pre-Delivery order
in C.R.P(PD)No.1122 of 2016

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