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C.R.P.No.3307 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.08.2022

CORAM

THE HONOURABLE Mrs.JUSTICE **J.NISHA BANU**

C.R.P.(PD)No.3307 of 2016

and

C.M.P.No.16865 of 2016

1. N.Selvakumari
W/o Natarajan

2. P.Vijayakumari,
W/o Paneerselvam

.. Petitioners

Vs

1. C.Muthu,
S/o Chandrasekara Padayachi

2. Jambukumar,
S/o Chandrasekara Padayachi

3. G.Rajaraman,
S/o Govindasamy Naidu

4. S.Srinivasan,
S/o Shanmugam

5. S.Indumathi,



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S/o S.Srinivasan

..Respondents.

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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 11.04.2016 in I.A.No.33 of 2014 in O.S.No.186 of 2011 on the file of the First Additional Sub Court, Cuddalore.

For Petitioners	: Mr.T.Saikrishnan
For Respondents	: Mr.R.Gururaj for R1 and R2 No appearance for R3 Mr.D.Ravichandran for R4 and R5

ORDER

The plaintiffs/petitioners have filed the present revision against the fair and decretal order dated 11.04.2016 made in I.A.No.33/2014 in O.S.No.186 of 2011 on the file of the First Additional Sub-Court, Cuddalore.

2. The brief facts of the case of the petitioners is that they have filed a suit for partition, in which, certain items of the properties were omitted to be



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included in the suit by oversight. As they are entitled to 1/4th share in those properties, they wanted to include those properties in the suit schedule as items 11 to 14 and consequential amendment in the pleadings. Hence, the plaintiffs filed an application for amendment in the plaint. The trial Court dismissed the said application. As against which, the present revision has been filed.

3. Heard the learned counsel for the petitioner and the learned counsel appearing for the 1st, 2nd, 4th and 5th respondents.

4. Learned counsel for the petitioners would submit the petitioners are entitled to 1/4th share in the properties mentioned in the amendment petition and hence, those properties are to be included in the suit as items 11 to 14. He would further submit that as per amendment to Hindu Succession Act, 2005, the petitioners are also entitled to 1/4th share in all the suit properties. The properties now sought to be included in the suit are in joint possession and enjoyment of the petitioners and the respondents 1 and 2. The respondents 1 and 2 have filed a collusive suit in O.S.No.274/98 on the file of Sub Court, Cuddalore, and obtained a decree behind their back. The said



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decree is not binding on them and they were not parties in the said suit and hence, the said decree is liable to be declared as null and void. Therefore, the petitioners sought for amendment to the present plaint. The trial Court did not accept the contentions of the petitioners that they came to know of the particulars of the earlier suit filed in the year 1998 by the respondents 1 and 2 conclusively only now. Learned counsel would further submit that whether the judgment and decree passed in the collusive suit can be challenged before the same court which passed such decree, are matters to be decided in the course of trial after the amendment to the pleadings are made and not at the stage of considering the very application. Hence, the trial Court has erred in deciding the issue even at the stage of considering the amendment application itself. If the amendment petition would have been considered and allowed, it will give a quietus to the dispute between the parties otherwise, the petitioners would be seriously prejudiced. Hence, he would pray to set aside the order passed in I.A.No.33 of 2014.

5. In support of the above contentions, learned counsel for the petitioners relied on the following decisions.



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- i) 1988 (1) MLJ 377 (A.T.Mathavan vs. S.Natarajan)
- ii) 1969(2) MLJ 239 (M.Allauddin vs. P.S.Lakshminarayanan)
- iii) 2020 (11) SCC 629 (Shivnarayan (Dead by Legal Representatives vs. Maniklal (dead) through Legal Representatives and Ors.)

6. Learned counsel for the respondents 1 and 2 would submit that only to drag on the proceedings the said amendment application has been filed. If the amendment petition is allowed, the value of the suit will increase and the pecuniary jurisdiction of the Court will be beyond its limit because the total value of the suit would come to Rs.30,22,000/-. The suit in O.S.No.274/1998 is not a collusive suit as alleged by the petitioners. Items 11 and 14 of the properties alleged to be included in the suit schedule belong to their mother Krishnaveni. She bequeathed the said items of the properties through settlement deed executed by her mother Dhanalakshmi on 30.11.1960 and it was stated in the settlement deed that the said items would devolve on the respondents 1 and 2 after the death of Krishnaveni Ammal. The Settlor and witness to the said document are no more. Therefore, the said items of the properties belongs to the respondents 1 and 2 and thus, the said items need



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not be added in the suit properties. The petitioners are not entitled to the said items of properties and the said items need not be included in the suit schedule properties. The trial Court has rightly dismissed the I.A.No.33 of 2014 and therefore, the C.R.P. has to be dismissed.

7. In support of the above contentions, learned counsel for the 1st and 2nd respondents would rely on the decision reported in 1978(2) SCC 91 (M/s.Ganesh Trading Co. vs. Moji Ram).

8. The petitioners have filed a suit in O.S.No.186 of 2011 for partition against the respondents. It is the contention of the petitioners that at the time of filing the suit, they have omitted to include certain items of properties standing in the name of their mother and to putforth certain pleadings, praying for necessary reliefs, since those items of properties were not known to them at the time of filing the suit inspite of due diligence and hence, they have filed an application for amendment. However, the amendment application was objected by the respondents on the ground that the petitioners have come forward with such application of amendment belatedly with a view to drag on the proceedings. Further, if the amendment is allowed, the value of the suit



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will increase and the pecuniary jurisdiction of the Court will go beyond its limit because the total value of the suit would come to Rs.30,22,000/-.

9. Considering the submissions made on either side, this Court is of the view that mere delay and laches in making the application for amendment cannot be a ground to refuse the amendment. Even though the prayer for amendment was a belated one, the question that needs to be decided is to see whether by allowing the amendment, the real controversy between the parties may be resolved. It is well settled that under Order 6 Rule 17 of the Code of Civil Procedure, wide powers and unfettered discretion have been conferred on the court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the court, just and proper. Even if, such an application for amendment of the plaint was filed belatedly, such belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, the said amendment is necessary. Further, it is the case of the petitioners that the properties now sought to be included in the suit are in the joint possession and enjoyment of the petitioners and the 1st and 2nd respondents and the petitioners are entitled to 1/4th share each. As



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regards the other objections raised by the respondents that if the amendment is allowed, the value of the suit will increase and the pecuniary jurisdiction of the Court below will be beyond its limit is concerned, the Court below can grant an opportunity to the plaintiffs to pay the deficit court fee and if there is any issue arises about the pecuniary jurisdiction, the same shall be examined and on a definite finding on that issue, the Court below can decide whether the plaint should be retained or will have to be returned to the plaintiffs as one in excess of the pecuniary jurisdiction of that court for presentation before proper Court. Therefore, this Court is of the opinion that the order passed by the Court below has to be set aside. Insofar as the judgments relied on by the learned counsel for the parties are concerned, they are distinguishable on facts and hence, they are not applicable to the facts of the present case.

10. In the result, the Civil Revision is allowed. The order dated 11.04.2016 in I.A.No.33 of 2014 in O.S.No.186 of 2011 on the file of the First Additional Sub Court, Cuddalore, is set aside. Consequently, connected miscellaneous petition is closed. No costs.



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Index :Yes/No

Speaking/Non-speaking order
vsi

To

The First Additional Sub Court,
Cuddalore.



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J.NISHA BANU, J.

(vsi)

Pre-delivery order in
C.R.P.(PD)No.3307 of 2016

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