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C.R.P.No.531 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	20.07.2022
PRONOUNCED ON	:	14.10.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.No.531 of 2016
and C.M.P.No.2698 of 2016

1) Mariammal

2) Lilly

3) Fathima Mary

.. Petitioners/ Plaintiffs

Versus

1) Arokiasamy

2) Pathinathan

3) Susai Mary

4) Franciska Mary

5) Arockimary

.. Respondents/ Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order passed in I.A.No.423 of 2014 in O.S.No.39 of 2005 dated 20.02.2015 on the file of the Court of District Munsif Cum Judicial Magistrate, Kattumannar Koil.



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For Petitioners : Mr.A.Muthukumar

For RR 1, 3, 4 & 5 : No Appearance

For R-2 : Mr.N.C.Ashok Kumar

For Mr.K.Balu

ORDER

This Civil Revision Petition has been filed seeking to set aside the order passed in I.A.No.423 of 2014 in O.S.No.39 of 2005, dated 20.02.2015 on the file of the Court of District Munsif Cum Judicial Magistrate, Kattumannar Koil.

2. The brief facts, that are necessary for the disposal of the present civil revision petition are as follows:-

2.1. Suit in O.S.No.39 of 2005 was filed by the plaintiffs/ revision petitioners herein for partition and for separate possession of their 3/9th share in the suit properties. Pending suit, the plaintiffs/ revision petitioners herein filed an application under Order VI Rule 17 and Section 151 of the Civil Procedure Code in I.A.No.423 of 2014 seeking for a permission to amend the plaint. Upon hearing, the learned Judge had dismissed the application vide order dated 20.02.2015. Aggrieved against the same, the plaintiffs/ revision petitioners herein have filed the present Civil Revision Petition.



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3. The case of the revision petitioners is that the suit property belongs to one Adaikalam, who is the father of the plaintiffs/ revision petitioners herein and respondents 1 to 4. He died intestate on 07.03.2003. After the death of the said Adaikalam, the suit property devolved on the petitioners and the respondents 1 to 4 herein. Since the respondents 1 to 4 herein did not come forward for an amicable partition, the plaintiffs/ revision petitioners issued a lawyer's notice dated 08.10.2004. Since the respondents refused for partition of the suit properties, the plaintiffs/ revision petitioners herein filed the above suit in O.S.No.39 of 2005 for partition and for separate possession of their 3/9th share in the suit properties.

3.1. According to the learned counsel for the plaintiffs/ revision petitioners, the suit is one for partition and the relief for partition is a continuing cause of action, so even if one suit for partition is dismissed for default, the same plaintiff can bring another suit for partition. The main objective for filing the application for amending the plaint, is only to avoid multiplicity of proceedings. It is his further contention that in a suit for partition, the defendant is also a plaintiff and therefore, the amendment of pleadings, cannot be rejected. He stated that no amendment of plaint can be rejected on the ground that the trial Court would lose its jurisdiction if the amendment of plaint was allowed. To substantiate the same, the learned counsel for the petitioner drew reference to the judgment made in ***V.Rajaram vs.***



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Periaswami Pillai reported in **2000 (1) MLJ 345**, wherein it has been held that application for amendment cannot be rejected on the ground that the trial Court would lose its jurisdiction.

3.2. Further, the learned counsel for the plaintiffs/ revision petitioners submitted that in a petition for amendment of plaint, the Court cannot go into the merits of the amendment. This principle has been reiterated by the Hon'ble Supreme Court in ***Rajesh Kumar Aggarwal and others vs. K.K.Modi and others*** reported in **2006 (3) MLJ Page 70 (SC)**.

3.3. Therefore, the learned counsel for the plaintiffs/ revision petitioners prayed that the order passed in I.A.No.423 of 2014 in O.S.No.39 of 2005, dated 20.02.2015 on the file of the Court of District Munsif Cum Judicial Magistrate, Kattumannar Koil is liable to be set aside, and hence prayed for allowing the present revision.

4. Per contra, the learned counsel for the respondents would submit that super structures were found to be built in the first three items of suit properties and therefore, the said suit properties were not properly valued and no proper reasons were given by the plaintiffs for the wilful omission to assess the value of the suit properties. It is his further contention that the suit was filed on



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06.04.2005 and the written statement, containing the valuation of the suit items 1 to 17 as per kist value and court fee paid, were stated to be incorrect by the respondents. But the plaintiffs did not come forward to incorporate any amendment regarding the same, even when the respondents pointed out the same in the written statement and now, after a lapse of 9 years, the petitioners have filed the present petition, which is liable to be dismissed and the learned Judge has rightly dismissed the plea of the petitioners. Hence, prayed for dismissing the revision.

5. Heard the learned counsel for the petitioners as well for the respondents and perused the materials placed before this Court.

6. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 C.P.C. are concerned, is well settled that amendments should be refused only where the amendment would cause the other side party an injury which could not be compensated in costs. In ***Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil and others***, reported in (1957) 1 SCR 595, it is held that all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in



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controversy between the parties. In the considered opinion of this court, on the basis of the afore-stated legal position, the amendment application made by the plaintiff should have been granted, especially in view of the fact that it was admitted by the plaintiff that the suit property was initially undervalued in the plaint and by virtue of the amendment application, the plaintiff wanted to correct the error and wanted to place correct market value of the suit property in the plaint. The trial court has dismissed the IA., mainly because there was delay in filing the amendment petition. The amendment is sought for, to amend the plaint by incorporating the correct value in respect of item Nos.1 to 17 of the suit properties as per Section 7 of the Tamil Nadu Court Fees and suit Valuation Act. Hence, to meet the ends of justice, this Court feels that the amendment petition is liable to be ordered.

7. In the result, the order of the lower court is set aside and I.A.No.423 of 2014 in O.S.No.39 of 2005 is allowed. The amendment sought for is ordered. Since the suit is of the year 2005, the learned Judge is directed to dispose of the suit within a period of six (06) months from the date of receipt of a copy of this order after incorporating the amendment so as to change the valuation of the suit properties.



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8. The Civil Revision Petition is Allowed, as ordered above. No costs.

Consequently, connected miscellaneous petition stands closed.

14.10.2022

Index : Yes / No

Internet : Yes

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To:

- 1) The Court of District Munsif Cum Judicial Magistrate,
Kattumannar Koil.
- 2) The Section Officer, V.R.Section, High Court, Madras.



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J.NISHA BANU, J.,

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Order made in
C.R.P.No.531 of 2016

Dated:
14.10.2022