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C.R.P. No. 1053 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 1053 of 2017

and

C.M.P. No. 5088 of 2017

1. K.Muthukumarasamy,
S/o. Kandasamy Gounder

2. K.Nagamanickam,
S/o. Kandasamy Gounder

... Petitioners

Versus

1. Dhanalakshmi,
D/o. Latchumanasamy

2. Shanti,
W/o. Late Jayaraman

3. Prabhakaran,
S/o. Ramasamy

4. Annammal,
W/o. Kandasamy Gounder

... Respondents

PRAYER : Civil Revision Petition filed under Art.227 of Constitution of India, praying to set aside the order and decretal order dated 24.11.2016

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made in I.A. No.619 of 2015 in O.S.No. 223 of 2006 on the file of the

WEB COURT District Munsif, Pollachi.

For Petitioners : Mr.T.M.Naveen

For Respondents : Mr.T.V.Krishnakumar for R1 to R4

ORDER

The revision petitioners are the defendants 1 and 2 in the suit in O.S.No. 223 of 2006 on the file of District Munsif Court, Pollachi, and the said suit was filed by the respondents 1 to 3/plaintiffs, who are sisters of defendants 1 and 2 for the relief of partition in respect of claiming 1/3rd share in the suit property as prescribed in the plaint schedule.

2. The defendants also contested the suit by filing their written statement. Issues were framed and at the time of beginning trial, the plaintiffs filed an application in I.A.No. 619 of 2015 under Order 6 Rule 17 and 18 and Sec.151 of C.P.C. praying to amend the plaint with regard to schedule of property in respect of Survey Nos. 242/3A, 241/2D, 241/2H, 241/2J instead of those survey numbers, they wanted to amend Survey Nos.240/3A, 242/2D, 242/2H, and 242/2J in the plaint schedule. The said

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application was strongly objected by the defendants stating that based upon the alleged Will said to have executed by one Kandasamy Gounder, the plaintiffs are claiming share in the suit as prescribed in the plaint, and now, they wanted to include survey numbers as the same were mentioned in the chitta and adangal, as such, is not maintainable in law against the Will. Furthermore, after nine years from the date of filing of the suit, they have filed the application during the commencement of trial, which is amounting to drag on the proceedings. But, the same was not rightly appreciated by the trial court and allowed the said application, as such, it is erroneous one. Hence, they prayed to set aside the order passed by the trial court. Challenging the said findings, now the defendants 1 and 2 have preferred this Civil Revision Petition.

3. The learned counsel appearing for respondents/plaintiffs 1 to 3 submitted that it is true, the plaintiffs are claiming right over the property based on a Will said to be executed by their father Kandasamy gounder mentioning several survey numbers in the schedule of property. During the trial, when they obtained chitta and adangal, the survey numbers of four



items are wrongly mentioned. Hence, the necessity arose for them to file an application to amend the plaint. As stated by the learned counsel for revision petitioners, after lapse of nearly about 9 years, the amendment application was filed on the side of plaintiffs by relying the authority reported in **2019 (4) SCC 332** in the case of ***M.Revanna vs. Anjanamma (dead) by legal representatives and others***, the learned counsel would further submit that the plaintiffs have not assigned any reason for the delay and they must exercise their due diligence at the time of filing of the suit itself, but instead of that, at the time of trial, they have filed the amendment application to amend survey numbers that too, which were not mentioned in the Will, as such, it is not maintainable in law. Accordingly, the plaintiffs have prayed to allow this Civil Revision Petition.

4. Heard and considered rival submissions of learned counsel for revision petitioners as well as respondents and perused the records.

5. On perusal of the ratio laid down in the said authority, it is acceptable one, but on seeing the facts, sisters are filing the suit against their brothers in the year 2006 and the amendment application was filed in the year of 2015. The reasons assigned by them is that the original documents



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are with their brothers and they were not given any of the property particulars at the time of filing suit and only at the time of trial, when they have applied for chitta and adangal, they came to know that four items of survey numbers belong to their family were wrongly mentioned in the Will. So, the reasons assigned by the plaintiffs are acceptable one because they were given up their marriage and it is not possible for them to get the original documents of the family properties from the plaintiffs.

6. Furthermore, as rightly stated by the plaintiffs' counsel, in a suit for partition, both the plaintiffs and defendants are being parties, the properties, which are necessarily be divided should be included in the suit to avoid multiplicity of proceedings. However, the objections raised by the Revision Petitioners stating that the plaintiffs are not entitled to amend the plaint, but on seeing the reasons assigned in the application, they wanted to rectify the survey numbers, which were wrongly mentioned in the Will. As per the Chitta and Adangal, it belongs to Kandasamy gounder family. Therefore, subject to the objections raised by the defendants, the amendment application is ordered to be allowed. Whether the properties are belong to their family, it has to be proved by adducing evidence, but not mere



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allegations. Therefore, liberty is granted to the defendants to raise their defence with regard to ownership of the properties at the time of trial.

Furthermore, the learned counsel for Revision Petitioners submitted that in the case of such amendment, the share in respect of those properties will be differed comparing to the relief claimed by the plaintiffs. However, liberty is granted to the defendants in respect of share in the properties during the trial by filing additional written statement. Since the suit is pending from the year of 2006, the trial court is directed to proceed with the case and dispose the same within a period of six months from the date of receipt of copy of this order. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To

District Munsif,
Pollachi.

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T.V.THAMILSELVI, J.

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