



C.R.P(PD)No.1726 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P(PD).No.1726 of 2017

and

CMP.No.8158 of 2017

1.Djea Sankar

2.Vengadazalabady

..Petitioners

Vs.

1.Aroumougam

2.Sivacoumar

3.Kesava Reddiar

4.Gurubaran Reddiar

5.Revathy

6.Ananda Krishna Reddiar

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 28.02.2017 in I.A.No.415 of 2016 in O.S.No.132 of 2009 on the file of the Additional Sub-Court, Pondicherry.



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For Petitioners : Mr.K.Chandrasekaran
For Respondents : Mr.D.Ravichander for R6
Mr.A.Muthukumar for R4
No Appearance – R1 to R3 & R5

ORDER

The plaintiffs in O.S.No.132 of 2009, which is pending on the file of the Additional Sub-Court, Puducherry are the revision petitioners herein.

2.The said suit in O.S.No.132 of 2009 had been filed by the plaintiffs, seeking partition and separate possession of a suit property, which had been shown in the schedule to the plaint. The 6th respondent herein, who is shown as 6th defendant in the said suit is interested only in the 3rd item of the suit property mentioned in the plaint namely, the property at Thirubuvanai Village in Cad. No.399 in Thirukanur Sub-Registration District in Puducherry.



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3.It is the contention of the learned counsel appearing for the 6th respondent / 6th defendant that with respect to the aforementioned property, which had been morefully described in schedule No.3 to the plaint, he had instituted a suit in O.S.No.632 of 1985, seeking specific performance of an agreement of sale, which had been entered into between him and the father of the present petitioners / plaintiffs in O.S.No.132 of 2009. A decree for specific performance was granted on 17.03.1998. Thereafter, A.S.No.385 of 1988 was filed and this Court had pronounced a judgment on 02.02.2001, dismissing the appeal and confirming the decree. Thereafter, he had filed E.P.No.130 of 2002 and a sale deed has also been executed and registered in his favour. Further E.P.No.105 of 2004 had been filed for delivery of possession. At that point of time, the petitioners herein appeared to have obstructed delivery and claimed that they had instituted the present suit in O.S.No.132 of 2009 for partition and separate possession. It is the grievance of the learned counsel for the 6th respondent that the suit itself is collusive in nature and filed in the year 2009.



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4.In the year 2016, the plaintiffs had filed an application, seeking amendment to include several other properties and also touching upon the valuation of the suit. The learned Additional Sub-Judge, Puducherry had dismissed the said application, necessitating filing of the present revision petition.

5.In the affidavit filed in support of the said application, absolutely no details were given as to whether, the properties are available for partition, whether the plaintiffs in the suit have a right over the properties or title over the property. None of the details have been given. A list of properties have given seeking to include them as further properties to the schedule in the plaint.

6.Heard the learned counsels, who appeared on either side.

7.The present suit in O.S.No.132 of 2009 for partition had been pending from the year 2009. A valuable right had accrued to the 6th respondent. That should have been taken note by this Court.



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8.It is not known whether there is a stay of further proceedings of E.P.No.105 of 2004. Though the said EP is not questioned in this Civil Revision Petition, let me make it clear that to the extent possible records have been perused, there is no hindrance in the further proceedings to be initiated by the Additional Sub-Court, Puducherry in E.P.No.105 of 2004. Let that Execution Petition proceed in manner known to law.

9.It is also seen that in the affidavit filed in the support of the present petition, it has not been disclosed as to whether these properties are available for partition.

10.Mr.A.Muthukumar, learned counsel appearing for the 4th respondent states that in Puducherry, the customary Hindu Law will not apply and the French Code shall apply to the parties. But, even then there is an obligation on the part of the plaintiffs to aver title to the properties which are now sought to be added. There are absolutely no details given in the affidavit. Unless there are some materials provided, the Court cannot



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proceed to grant partition even in accordance with the relationship among the parties. It is also pointed out by Mr.A.Muthukumar that the application seeking amendment was filed nearly 12 years after the filing of the suit.

11.The plaintiffs will have to first establish that they have an existing title over the properties to seek partition. These details are absent in the affidavit.

12.Therefore, I concur with the order of the learned Additional Sub-Judge and dismiss this Civil Revision Petition.

13.The petitioners may be given an opportunity to provide necessary documents regarding title with respect to the properties now sought to be added and then, the Court may consider the application for amendment, otherwise the plaintiffs cannot be permitted to include any property without any averment regarding the title to the said properties.



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14.Accordingly, this Civil Revision Petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

15.Let me also again make it clear that to the extent possible the records are perused, there is no impediment in proceeding further with E.P.No.105 of 2004 in manner known to law.

23.02.2022

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Index:Yes/No

Internet:Yes/No

Speaking/Non-speaking order

To-

The Additional Sub-Court,
Puducherry.



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C.V.KARTHIKEYAN, J.

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