



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRP (PD) No. 3159 of 2017

1. R.Rangaraj
2. R.Rajalakshmi
3. R.Velvizhi
4. Subbammal (died)
5. Mrs. Dr.Senthamarai

... Revision Petitioners/Petitioners/Defendants

[1st Petitioner to 3 and sole respondent are the LR's of the deceased 4th Petitioner viz., Subbammal Vide memo dated 05.04.2022 and order of Court dated 18.04.2022 in C.R.P.No. 3159 of 2017]

Vs

R.Sundaram

...Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, against the order passed in I.A.No. 270 of 2016 in O.S.No. 480 of 2013 on the file of the IV Additional District Judge, Coimbatore, dated 20.06.2017.

For Petitioners : Mr. B.Singaravelu

For Respondent : M/s. S.Janani
for M/s. T.Sai Krishnan



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ORDER

Even before proceeding on the merits raised in the revision petition, it is incumbent on me to record a memo filed by the learned counsel for the petitioners stating that the fourth revision petitioner/ Subbammal had died on 30.03.2021 but that her legal representatives are already on record as first, second and third petitioners and as respondent.

2. In view of the fact that the legal representatives are already on record, the issue of abatement will not arise. The memo is recorded and therefore before issuing the order copy, the Registry may ensure that the cause title reflects that the fourth petitioner/Subbammal had died and that the petitioners 1 to 3 and the respondent are the legal representatives. The fifth petitioner is the wife of the first petitioner and cannot be a legal representatives of the deceased fourth petitioner.

3. The respondent herein had filed OS.No. 480 of 2013 seeking partition and separate possession of a string of properties, which had been mentioned in the plaint schedule. The revision petitioners had filed written statement. It is stated during the course of arguments that the revision petitioners are also inclined to participate in the partition of the



suit schedule properties. However, it transpires that they had not mentioned in the written statement that there are other properties which should also be subjected to partition and that there are also liabilities which had arisen which should also be mentioned in the schedule to the plaint and which should be taken into consideration while passing either the preliminary decree or the final decree. This stated was made only during the course of cross examination of PW-1.

4. I am informed that the cross examination is at half way stage and has to be continued. At that particular point of time, the revision petitioner filed I.A.No. 270 of 2016 under Order VI Rule 17 of the Code of Civil Procedure seeking to amend the plaint to include certain properties and also to include liability which they claim should also be jointly suffered by the plaintiff. That application was dismissed by an order dated 20.06.2017 by the IV Additional District Court, Coimbatore.

5. It had been observed by the learned District Judge that the trial had commenced and that the properties now sought to be included and the liability mentioned, had not been stated in the written statement and therefore, in the absence of pleadings, it would not be proper to seek



amendment of the plaint by the defendants. It had also been stated that there was also no stand taken in the written statement that the plaint should suffer owing to non inclusion of these properties. It had therefore been finally stated that the application has to be dismissed and accordingly application was dismissed. Questioning that particular order, the present Revision Petition had been filed.

6. Heard Mr.B.Singaravelu, the learned counsel appearing for the petitioners and Ms. S.Janani learned counsel appearing on for the respondent.

7. Let me not enter into a detailed discussion on the facts but it is evident that the petitioners herein have stated in their application before the trial Court that there are several other properties, which are partitionable. This fact is refuted by the respondent/plaintiff, who claims that the properties which are sought to be included are self acquired properties of the plaintiff and more particularly acquired by the wife of the plaintiff and therefore, they cannot be subjected to partition.



8. To decide this particular aspect, there must be an issue framed.

For framing of issues, there must be pleadings. Naturally this necessitates that some leverage has to be given to the revision petitioners to file necessary application to amend the written statement and if such application is filed and depending the averments made in the affidavit filed in support of the said application, the learned IV Additional District Judge at Coimbatore, may take a considered decision whether to permit such amendment or not. If it is permitted, then necessary opportunity may be granted to the respondent/plaintiff to file a reply to such amendment to the written statement and thereafter issues as recognised under Order 14 CPC may be framed and trial may recommence once again. If such application seeking amendment of the written statement is dismissed by the learned IV Additional District Judge, then the trial has to proceed from where it had been left or stopped prior to the filing of the present revision petition.

9. It is hoped that the entire exercise by both the parties shall be completely as expeditiously as possible and they would co-operate for disposed of the suit on or before 31.12.2022.



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C.V.KARTHIKEYAN, J.

Vsg

10. With the said observation, this Civil Revision Petition stands disposed of. No order as to costs.

18.04.2022

vsg

Index: Yes/No

Speaking order / Non speaking order

To:

1. IV Additional District Judge, Coimbatore.

2. The Section Officer,
VR Section,
Madras High Court, Chennai.

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