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CRP.(NPD).No. 4311 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2022

CORAM:

**THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI**

C.R.P.(NPD).No. 4311 of 2018

and

CMP.No. 23588 of 2018

1.Kuppusamy  
2.Murugan

.. Petitioners

Versus

1.Jayachandran  
2.Selvaraj  
3.Rani  
4.Mani  
5.Mari  
6.Jaya Gobi  
7.Ramasamy  
8.Nallamal

...Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 05.09.2018 made in I.A.No.482 of 2018 in O.S.No.71 of 2012 on the file of the Principal District Court, Kallakurichi.



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For Petitioners : Ms.K.Ameslekha

For Respondents : Mr.D. Murugan

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### **ORDER**

This Civil Revision Petition is filed seeking to set aside the order dated 05.09.2018 passed in I.A.No.482 of 2018 in O.S.No.71 of 2012 passed by the Principal District Munsif Court, Kallakurichi.

2. Heard both sides and perused the materials available on record.

3. On a perusal of the records, it is seen that the petitioners/plaintiffs filed the suit in O.S.No.71 of 2012 before the learned Principal District Munsif Judge, Kallakurichi, for declaration and permanent injunction against the defendants. The said suit was filed against the defendants claim having been made in respect of 13 items of the suit property. The defendants are claiming their right over the property by way of filing written statement. After commencement of trial, the petitioners/plaintiffs filed I.A.No.482 of 2018 under Order VI Rule 17 of the Code of Civil Procedure, seeking to amend the plaint. After analyzing the records, the trial Court dismissed the



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said application by order dated 05.09.2018. Aggrieved by the aforesaid order, the petitioners/plaintiffs has preferred this revision.

4. The learned counsel appearing for the petitioners/plaintiffs contended that the suit was filed by the petitioners/plaintiffs for declaration and permanent injunction. While filing the plaint, some items of the properties have not been mentioned in the plaint schedule properties and and therefore, it is just and necessary to amend the plaint in respect of the plaint schedule properties. Hence, he prays to set aside the findings of the trial Court.

5. The learned counsel appearing for the contesting defendants contended that the petitioners/plaintiffs ought to have given due diligence, and only after cross examination of the witnesses, they filed to amend the plaint application and as such, the same is not maintainable and it will lead to multiplicity of proceedings, and therefore, this revision is not maintainable.

6. On considering both side submissions, it is seen that the aforesaid



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suit was filed by the petitioners/plaintiffs for declaration and permanent injunction in the year 2012. While filing the plaint, some items of the properties have not been mentioned in the plaint. Written statement was also filed by the first defendant and trial has also commenced. Thereafter, the petitioners/plaintiffs ought to have included certain items of the properties in the plaint schedule properties. But the contention of the petitioners/plaintiffs is that several items of the properties had been jointly enjoyed with the defendants. Therefore, the petitioners/plaintiffs filed the said application before the trial Court to amend the plaint. On a further perusal of the documents, it reveals that certain items of the properties have not been to prove their claim, and they have right over the properties and they omitted to add them in the plaint, but the trial Court has failed to take note of these facts.

7. The learned counsel for the contesting 1st defendant submitted that after completion of evidence, the petitioners/plaintiffs have filed the application to amend the plaint only to fill up the lacuna, but, admittedly, till date, evidence is not over. Both the parties are entitled to amendment the pleadings to defend their case before the trial Court to prove right over the



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properties, which would be defeated. The trial Court erroneously dismissed the application and therefore, the order passed by the trial Court is to be set aside.

8. Accordingly, the impugned order dated 05.09.2018 made in I.A.No.482 of 2018 in O.S.No.71 of 2012 on the file of the Principal District Munsif Court, Kallakurichi, is set aside and the trial Court is directed to afford an opportunity of hearing the contesting defendants to file additional written statement in respect of the proposed amendment and both the parties are directed to adduce their respective evidence. Further, the trial Court is directed to dispose of the suit itself within a period of 8 months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

**02.11.2022**

msm

Index : Yes/No

Speaking Order : Yes/No

To

1. The Principal District Munsif Court, Kallakurichi.
2. The Section Officer, V.R.Section, High Court, Madras.



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**T.V.THAMILSELVI, J.**

msm

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