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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.01.2022

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P(MD)Nos.55 and 56 of 2022

and

C.M.P(MD) No.271 of 2022

1.Malathi

2.Ashok

... Revision Petitioners/Petitioner/
Plaintiffs
(in both petitions)

Vs.

1.Nallasamy @ Nallathambi

Vibeesananan (died)

Vijayalakshmi (died)

2.Swathi

Tharani (Died)

3.Kulandayee Ammal

4.Nirmala

5.Vasuki

6.Manjula

7.Vijayalakshmi

8.Subramani

9.Rajamani

Perumayee (died)

10.Naveen Kumar

11.Minor Sugitha

12.Senthamilselvan

... Respondents/Respondent/Defendants
(in both petitions)

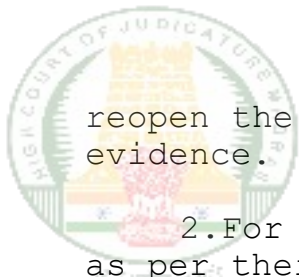
COMMON PRAYER:- Civil Revision Petitions filed under Article 227 of Constitution of India, to set aside the orders dated 10.12.2021 passed in I.A.Nos.1 and 2 of 2021 respectively in O.S.No.210 of 2007 on the file of the Principal District Munsif Court, Karur.

For Petitioner : Mr.S.Vijayashanthi
(in both petitions)

ORDER

The above civil revision petitions arise against the dismissal of the two petitions filed by the revision petitioners seeking to

<https://hcservices.ecourts.gov.in/hcservices/>



reopen the evidence of the plaintiffs and to recall P.W.1 to further evidence.

2. For the sake of convenience, the parties shall be referred to as per their rank in the suit.

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3. The facts in brief relevant to appreciate the orders under revisions are herein below narrated :-

(i) The revision petitioners/plaintiffs had filed the suit in O.S.No.210 of 2007 on the file of the Additional District Munsif at Karur, (which was later transferred to the Principal District Munsif Court, Karur), for partition and separate possession of their 2/18th share in the suit schedule properties. They had contended that their great-grandfather, Veerppagounder owned 'A' and 'B' schedule properties. Veerppagounder's wife was Kaliyammal and out of the wedlock, two sons the second defendant Vibeesananan and Sundaram, the husband of the sixth defendant and two daughters Meenakshi and Papayee were born to them. The second defendant had married one Perumayee, through whom, he had got two sons Ramasamy and Nallasamy @ Nallathambi (the first defendant). The other son of Veerppagounder, namely, Sundaram had married the sixth defendant and through her, he had got four daughters, who have been arrayed as defendants 7 to 10 in the suit. The 11th defendant is the son of Meenakshi, the elder daughter of Veerppagounder and 12th defendant is the daughter of Pappayee, the other daughter of Veerapagounder and his first wife Kalliyammal. The defendants 3 to 5 are the legal heirs of Ramasamy, son of second defendant, Veebishanan.

(ii) The plaintiffs would contend that they have all been in joint possession and enjoyment of the entire suit properties. 'A' schedule property had yielded surplus income after meeting out family and agricultural expenses and out of the surplus income derived from the 'A' schedule properties, the suit 'B' schedule properties were purchased in the name of the members of the joint family. Therefore, all the properties were the ancestral joint family properties. Sundaram, the deceased son of Veerapagounder, had worked as a teacher and thereafter, he was worked as document writer and dabbled in real estate. The first defendant herein left the house and was living with his concubine and thereafter on her instigation, he has been creating problems in the family. Veerppagounder had died in the year 1981 followed by his first wife Kalliyammal in 1994. Their two daughters Meenakshi and Papayee died in the year 1992 and 2002 respectively. The said Veerppagounder had executed the last Will and testament on 19.10.1997 in a sound disposing state of mind, whereunder he had bequeathed all the properties equally to the legal representatives of his sons Veebishanan and Sundaram. This Will is in the custody of the defendants 6 to 10. The children of Meenakshi and Papayee have been arrayed as parties, only for obtaining a binding order. The

<https://hccs.courtsof.org/hccs/cases>



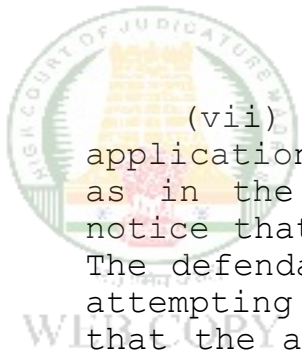
properties, had ended in a dispute, thereby constraining the plaintiffs to file the instant suit.

(iii) The first defendant, father of the plaintiffs, had filed a written statement *inter alia* contending that the plaintiffs are his children through the 12th defendant and that 'A' and 'B' schedule of the properties are the ancestral and undivided Hindu joint family properties of the Veerppagounder. The first defendant has pleaded non-joinder of necessary parties as Senthamilselvan, one of the sons of Nallusamy has not been added as party. Senthamilselvan was born to the first defendant through his second wife. The first defendant's contention was that the 12th defendant had deserted him 15 years ago and had not taken any steps to reconcile and thereafter in 1996, he had married one Dhanalakshmi as per the caste and customs of his community and out of this wedlock his son Senthamilselvan was born to him. After the second marriage, the first wife had also rejoined him and they are all residing under the same roof.

(iv) The third defendant had filed a written statement denying the fact that 'A' schedule property had yielded surplus income, out of which, 'B' schedule property was purchased and also the fact that 'A' and 'B' schedule properties were treated as joint Hindu family properties. The contention of the third defendant was that the properties were purchased from and out of the individual income of Veerppagounder and his sons second defendant and Sundaram. The defendants 6 and 13 had their own income and the property purchased in their name, are only from and out of their independent income. That the first defendant is living with his concubine, has to be proved by the plaintiffs. The defendants had admitted the Will dated 19.10.1970. He had also pleaded the non-joinder of necessary parties.

(v) The written statement on behalf of the fourth defendant was also more or less on the same lines so also the fifteenth defendant.

(vi) While so, when the matter was at the stage of arguments, the plaintiffs had come forward with the impugned petitions. In the said applications, they would submit that only when they were preparing for arguments, they came to realize that some important documents were omitted to be produced to show the ancestral property as well as the documents in respect of the surplus income from the ancestral property. The plaintiffs would also submit that one Palaru had to be added as a party to the proceedings. For these reasons, they have sought to have the evidence reopened and P.W.1 recalled.



(vii) The respondents had strongly contested the said application stating that it is highly belated, since even as early as in the year 2007, the defendants had put the plaintiffs on notice that the suit is bad for non-joinder of necessary parties. The defendants had also taken out the plea that the plaintiffs were attempting to protract the proceedings. They would also contend that the affidavits filed in support of the impugned petitions are totally silent about the documents that are sought to be produced. The original suit is of the year 2007. The defendants would also submit that the plaintiffs had extensively cross-examined the defendants and this is nothing, but an attempt to fill up the lacuna.

(viii) The learned Principal District Munsif, Karur, after considering the pleadings as well as the arguments dismissed the said application stating that the only ground on which the petition is sought to be reopened is that new documents had to be filed, for which, the evidence had to be reopened. However, the affidavit is totally bereft about the details of the documents and without filing an application for receiving the documents, the present petitions were totally unnecessary. Challenging the same, the revision petitioners are before this Court.

4.Ms.S.Vijayashanthi, learned counsel appearing on behalf of the petitioners/plaintiffs would vehemently contend that it was only after the evidence of D.W4, the petitioners had come to know that the parties have not been impleaded and that the documents had also brought to be filed. For this reason, it was necessary to reopen the hearing.

5.Heard the learned counsel for the petitioners and perused the records.

6.The affidavit filed in support of the petitions would simply state that while preparing for arguments, the plaintiffs and their counsel had realized that certain documents have been left out and that they had to be brought on record to show that the properties standing in the name of the others were all joint family properties and they had also stated that one Palaru was to be impleaded as a party to the proceedings. However, beyond this, no further details had been given and the affidavit is rather vague. The documents that are sought to be marked have also not been detailed. The proceedings are now at the stage of arguments and the issue of non-joinder of necessary party had been raised as early as in the year 2007 and the plaintiffs did not choose to implead the parties. In these circumstances, I do not find any infirmity in the orders passed by the learned Principal District Munsif, Karur.



7. In the result, these Civil Revision Petitions are dismissed.
No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:-

The Principal District Munsif,
Karur.

C.R.P(MD) Nos.55 and 56 of 2022

and

C.M.P(MD) No.321 of 2022

19.01.2022

kmk (CO)

GC(16.02.2022) 5P 2C