



C.R.P.No.419 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.02.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.419 of 2020 &
C.M.P.No.2159 of 2020

1. Sarasu @ Saraswathy
2. Gopu
3. Manokaran
4. Padmanaban

... Petitioners

Vs.

1. Kasturibai
2. Arun (Minor)

... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 20.12.2019 made in I.A.No.1224 of 2019 in O.S.No.124 of 2013 on the file of the learned Additional District Judge, Pondicherry.

For Petitioners : Mr.E.Thiyaga for
Mr.B.Balavijayan

For Respondents : Mr.T.Ananthasekar



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ORDER

The present Civil Revision Petition has been filed to set aside the fair and decretal order dated 20.12.2019 made in I.A.No.1224 of 2019 in O.S.No.124 of 2013 on the file of the learned Additional District Judge, Pondicherry.

2. The brief facts of the case are as follows:-

The petitioners, who are the defendants, are the sister-in-law and brother-in-laws of the 1st respondent / 1st plaintiff and the 2nd respondent / 2nd plaintiff is the son of the 1st respondent. The suit in O.S.No.124 of 2013 is filed for passing a preliminary decree for partition and allot respondents / plaintiffs one fifth share of the suit schedule mentioned properties by appointing an Advocate Commissioner to divide the suit schedule properties into metes and bounds into five equal shares and allot 1/5th share to both the respondents / plaintiffs and to pass final decree for partition in terms of preliminary decree. Further, the written statement has been filed on 24.07.2014 by the petitioners / defendant. In the meanwhile, I.A.No.1224 of 2019 was filed by the petitioners / defendants seeking to amend the plaint



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in O.S.No.124 of 2013, resisting the same, a counter was filed by the respondents / plaintiffs. The trial court, after considering the averments, dismissed the petition. Aggrieved against the same, the petitioners have come forward with this Civil Revision Petition.

3. The learned counsel for the petitioners submitted that the court below dismissed the petition in I.A.No.1224 of 2019 by giving a finding that the property sought for incorporating in the plaint is self acquired property of the deceased Sudarsan @ Sudarsanam, husband of the 1st respondent, without adducing evidence, when the fact that is a self acquired property is sternly denied and disputed.

4. Further, the learned counsel for the petitioners contends that the property, which was sought to incorporate in the suit for partition, is joint family property purchased in the name of Sudarsan @ Sudarsanam at his age of 23, by father, namely, Kothandapany out of his retirement funds. The said fact has to be proved by letting in evidence in the course of trial in the main suit, thereby sought to set aside the order passed by the court below.



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5. Per contra, the learned counsel for the respondents / plaintiffs would submit that the property sought for incorporation to the above suit is not coming under the category of joint family properties and the said property is self acquired property by the husband of the 1st respondent out of his own fund and efforts, and hence the above petition is not liable, therefore, the court below has rightly dismissed the I.A., thereby sought to dismiss the present petition, since it requires no interference.

Heard the learned counsels on either side and perused the documents placed on record.

6. It is well settled principle that while deciding an application for amendment, the court below is not supposed to go into the merits and demerits of the amendment and express an opinion one way or the other. That could be the subject matter of scrutiny after the amendment is allowed, applying the well accepted principles therefor, and after filing necessary documents by the parties and after appropriate additional issue is framed and that issue shall be tried by placing the requisite evidence and by



submitting the arguments in support of their respective cases.

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7. At this stage, it is worthwhile to refer the relevant provision of Civil Procedure Code, viz., Order VI, Rule 17, which reads as follows:-

“17. Amendment of pleadings. The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial”

1. In a suit for partition, in the event, the respondents / plaintiffs have included only certain properties, as if they are available for partition and leave some other properties which are also available for partition, the request of the defendants, in such event, to include the left out properties also in the plaint schedule would not in any way amount to altering or changing the nature or character of the suit, as such, an amendment is also necessary for an effective adjudication of the case and to avoid multiplicity of proceedings, as opined by the Hon'ble



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Division Bench of this Court reported in **MANU/TN/4490/2011** in **C.R.P.(PD) No.3006 of 2010 dated 16.11.2011 [Solavaiammal and Others Vs. Ezhumalai Goundar and Others]**

9. In a suit for partition and separate possession filed by the respondents/plaintiffs in O.S.No.124 of 2013 on the file of learned III Additional District Judge, Pondicherry, the petitioners / defendants filed I.A.No.1224 of 2019 under Order 6, Rule 17 of the Civil Procedure Code seeking for amendment of the plaint on the ground that some of the joint family properties were left out by the respondents / plaintiffs for partition. After hearing both sides, the court below dismissed the application holding that the vendor has received a sum of Rs.82,000/- prior to the execution of sale deed and remaining sale consideration for a sum of Rs.50,000/- from husband of the 1st respondent at the time of registration of sale deed and further proceeded to state that the husband of the 1st respondent was aged 23 at that point of time, thereby held that the property is purchased in and out of the income of the husband of the 1st respondent and can be treated as 'self acquired property'. The said order is put in challenge in this Revision Petition.



10. Insofar as the proposed amendment is concerned, by way of amendment, the petitioners / defendants claim that the properties, which are now sought to be inserted by way of amendment are also joint family ancestral properties, while the respondents/ plaintiffs claims that these properties are self acquired properties of the husband (deceased) of the 1st respondent / 1st plaintiff and therefore, not available for partition. These rival submissions made by the respondents / plaintiffs and petitioners / defendants are to be tested only by way of a full fledged trial. Though the petitioners / defendants claim that the properties now sought to be included are also joint family ancestral properties, the said statement has to be corroborated and substantiated during trial. Initial burden is on the respondents / plaintiffs. Once the said initial burden is discharged, the onus would shift on the petitioners-defendants. Therefore, it is equally incumbent on the part of the petitioners / defendants to lead rebuttal evidence to discharge their burden and establish that the properties covered under the amendment application are the joint family properties of the husband of the 1st defendant. Without having recourse to this adjudication process, neither these properties can be held to be ancestral properties nor self acquired properties. Therefore, the amendment of plaint is absolutely necessary. The



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learned Judge, taking note of the fact that the amount has been discharged to the vendor only by the husband (deceased) of the 1st defendant during prior and after execution of the sale deed, had come to the conclusion that the property is a self acquired property, thereby dismissed the petition. Merely on the reasons stated by the court below, on an assumption that it is his self acquired properties cannot be a ground to reject the amendment application.

11. Considering the facts and circumstances of the instant case and the fact that the order passed in I.A.no.1224 of 2019 dated 20.12.2019 to the effect that the amount was discharged by the [deceased] husband of the 1st respondent / 1st defendant prior and after execution of sale deed to the vendor and the same being specifically denied by the petitioners / defendants stating that it is only a joint family property and acquired out of income derived from the ancestors etc., are to be tested only by way of a full fledged trial and without conducting full fledged trial neither the said properties can be held to be ancestral properties nor self acquired properties and the fact that the inclusion of the left out properties in the plaint schedule would not in any way amount to altering or changing the nature or character of the suit, as such an amendment is also necessary for



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an effective adjudication of the case and to avoid multiplicity of proceedings, as opined by the Division Bench of this Court reported in **MANU/TN/4490/2011 in C.R.P.(PD) No.3006 of 2010 dated 16.11.2011 [Solavaiammal and Others Vs. Ezhumalai Goundar and Others]**, this Court is inclined to set aside the order passed by the court below in I.A.No.1224 of 2019 dated 20.12.2019.

12. For all the reasons stated above, this Court comes to the conclusion that the Trial Court has failed to exercise the jurisdiction conferred on it and it is a fit case in which the order of the Trial Court has to be interfered with by this Court.

13. In the result, the present Civil Revision Petition succeeds and the same is allowed. The respondents / plaintiffs shall be permitted to carry out the amendment [by way of incorporating the property mentioned in the petition in I.A.No.1224 of 2019] in the suit as prayed for in the amendment Petition within a period of two weeks from the date of receipt of a copy of this Order and pay the deficit Court-fee as per the new Valuation Slip attached consequent to the amendment of the Plaint. The Trial Court shall



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make an endeavour to dispose of the Suit as early as possible.

Consequently, connected Miscellaneous Petition is closed. No costs.

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Index : Yes/No
Internet : Yes/No
Speaking /Non-Speaking Order
ssd

To

The Additional District Judge,

Pondicherry. .



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V.BHAVANI SUBBAROYAN, J.,

ssd

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