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A.No.2529 of 2022 in
A.No.1249 of 2022 in
C.S.No.231 of 2022

SENTHILKUMAR RAMAMOORTHY, J

Prior to the institution of the suit, the intending plaintiffs filed Application No.1249 of 2022 seeking leave to institute the suit before this Court against respondents / defendants 1, 2, 3, 7, 8 and 9.

2. In the said application, initially notice was ordered to the respondents. Subsequently, after taking into consideration the affidavit of service filed by the applicants, the application was allowed. The present application to revoke leave is filed by the 10th defendant in the said suit.

3. Oral arguments on behalf of the applicant/10th defendant were advanced by Mr.V.Vijaykumar, learned counsel, and on behalf of the plaintiffs by Mr.K.Bijai Sundar, learned counsel.

4. The principal contention of learned counsel for the applicant was that a suit for partition should embrace all the properties in respect of



which partition may be claimed. By asserting that properties outside Chennai were not included in the suit schedule, it is contended that the suit is not maintainable, as framed, and therefore, leave should be revoked.

5. In support of this contention, learned counsel referred to and relied upon paragraph 6 of the notice dated 26.07.2021 from the plaintiffs, through their counsel, to the defendants in the suit. Learned counsel pointed out that paragraph 6 refers expressly to agricultural lands at Ullikudi Village, Papanasam Taluk, Thanjavur District and Vangal Village, Karur Taluk, Periyakarupur, Tiruchirapalli District. The second ancillary contention of learned counsel is that leave should have been obtained not only in respect of defendants who reside outside the jurisdiction of this Court but also in respect of properties which are situated outside the jurisdiction of this Court.

6. In support of these submissions, learned counsel referred to and relied upon the following judgments:



(i) *Rajendra Kumar Bose v. Brojendra Kumar Bose*, A.I.R. 1923 Calcutta 501.

(ii) *Kenchegowda v. Siddegowda Alias Motegowda*, (1994) 4 SCC 294.

(iii) *A.Giridhar & Another v. A.Suresh & Others*, 1988-2-L.W.308.

(iv) *Lakshmi v. A.Ganesan and Others*, (2013) 7 MLJ 129.

(v) *Govindrao v. Dadarao Alias Shrawan*, 2004 (3) ALL MR 660.

7. In response, learned counsel for the plaintiffs submitted that the applicant does not have *locus standi* to maintain this application because leave to sue was not prayed for in respect of the 10th defendant. The said application was limited to respondents 1, 2, 3, 7, 8 and 9. The second contention is that the only consequence of not including all the assets in the suit schedule is that a subsequent suit cannot be filed in respect thereof. Learned counsel also pointed out that there are genuine reasons for not including the other properties and that the said reasons would constitute special circumstances justifying the non-inclusion of



such properties. In any event, learned counsel submits that it is possible to amend the plaint or for the defendants, who have a share in the properties, to lodge a counter claim for inclusion of such properties.

8. Learned counsel also pointed out that learned counsel for the applicant is the 11th defendant in the suit and, therefore, should not prosecute the application as an Advocate on behalf of the 10th defendant.

9. By way of a brief rejoinder, learned counsel for the applicant submitted that the plaintiffs are no more than licencees in respect of the property as evidenced by notice dated 08.10.2020. By relying on Section 30 of the Advocates Act 1961, learned counsel asserts that he is entitled to appear as an Advocate in the matter.

10. The records disclose that leave to sue was applied for only in respect of respondents 1, 2, 3, 7, 8 and 9, all of whom reside outside the jurisdiction of this Court whereas this application to revoke leave was presented by the 10th defendant, who admittedly resides within the jurisdiction of this Court.



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11. The principal ground on which leave is sought to be revoked is that a suit for partial partition is not maintainable. Even the judgments that were relied upon by the learned counsel for the applicant, such as the judgment of the Division Bench of the Calcutta High Court, which was reported in *A.I.R. 1923 Calcutta 501*, indicate that special circumstances may justify relaxation of the general rule. At this juncture, as contended by learned counsel for the plaintiffs, it is unnecessary to draw conclusions with regard to the maintainability of a suit for partial partition especially at the instance of the 10th defendant in an application to revoke leave. The question as to whether the suit as framed is maintainable is left open to be decided at the appropriate juncture.

12. As regards the ancillary ground, namely, that leave was not obtained in respect of assets situated outside the jurisdiction of this Court, a perusal of the schedule to the plaint discloses that only three immovable assets are included therein. All three assets are within the jurisdiction of this Court. Therefore, it was not necessary for the



plaintiffs to seek leave in respect of assets which do not form the subject of the suit.

13. For reasons aforesaid, both grounds on which the applicant seeks to revoke leave are untenable. Hence this application is dismissed without any order as to costs.

06.02.2023

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