



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2023

CORAM:

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

CRP.Nos.2112, 2113, 2114 & 2118 of 2020
and CMP.No.13357 of 2020

1.Perumayee

2.Balasubramani

... Petitioners in all C.R.Ps.

Vs

1.Gunasekaran

2.Rukumani

3.Pavaayee

4.Pappathi

5.Valliammal

... Respondents in all C.R.Ps.

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, challenging the fair and final order passed by the Sub Court, Rasipuram, dated 20.02.2020 made in I.A.Nos.10 to 13 of 2019 in O.S.No.22 of 2010.

In all C.R.Ps.

For Petitioners : Mr.B.Jawahar

For Respondents : Mr.S.Rajmakesh

COMMON ORDER

These four revisions arise against the order passed in O.S.No.22 of 2010 on the file of the Sub Court, Rasipuram. O.S.No.22 of 2010 is a suit for partition which has been filed by the civil revision petitioners. The parties are



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all related to each other. It is the case of the defendants that in the year 1983, the grandfather of the plaintiffs had executed a settlement deed in their favour, whereby item Nos.10 to 14 of the suit schedule property were settled in their favour. Therefore, the defendants claim an absolute right over the property. The defendants had also filed another suit in O.S.No.127 of 2009 on the file of the District Munsif at Rasipuram. In this suit, a preliminary decree was passed. The final decree in I.A.No.100 of 2011 was taken. The plaintiffs in O.S.No.22 of 2010 filed an application to implead themselves in the final decree in I.A.No.565 of 2011. This application was initially dismissed by the trial Court on 19.06.2012, but the order was set aside and the parties were impleaded in and by way of an order in C.R.P.(PD).No.4181 of 2012 dated 12.12.2012.

2. After having been impleaded as party to the final decree proceedings in O.S.No.127 of 2009, this Court had directed that O.S.No.127 of 2009 should be tried along with O.S.No.22 of 2010. At the conclusion stage of arguments, an application was taken out in I.A.No.12 of 2019 to amend the plaint seeking for a declaration that the settlement deed on which O.S.No.127 of 2009 was filed, is null and void. This was resisted by the defendants herein / the plaintiffs in O.S.No.127 of 2009 that the relief sought for is barred by



time and apart from that, it comes within the scope of proviso to Order 6 Rule 17 CPC. This submission was accepted by the trial Court and the amendment application came to be dismissed.

3. Continuing the narration insofar as O.S.No.22 of 2010 is concerned, the plaintiffs filed an application to implead the defendants in O.S.No.127 of 2009 as parties to O.S.No.22 of 2010. This is because, if the suit is contested on the basis of the amended plaint, the rights of the newly proposed to be impleaded parties would be affected. This application too was dismissed because the amendment application came to be dismissed. Apart from that, two other applications have been filed to reopen and recall the plaintiffs for the purpose of deposing the evidence on the basis of the amended plaint.

4. When the matter was listed yesterday (i.e., 26.09.2023), I asked Mr.Jawahar, the learned counsel for the petitioners to find out the stage of the suit. Today, Mr.Jawahar, learned counsel for the petitioners reports that the suit is still pending and it is listed for filing counter in the final decree application. Since the proceedings in O.S.No.22 of 2010 have been kept in abeyance by an interim order of this Court, I proceed to hear the matter on merits.



5. Heard Mr.B.Jawahar, learned counsel for the petitioners and Mr.S.Rajmakesh, learned counsel for the respondents and perused the entire materials available on record.

6. The suit is for partition and if the suit is decreed then the plaintiffs will be entitled to shares. The shares of the plaintiffs will vary if the settlement deed on the basis of which the defendants' claim is found to be illegal or contrary to law or has not been proved. If it is ancestral property and the settlement deed has been written insofar as the share of the grandfather is concerned, even then there will be a variation in the shares to be declared in the preliminary decree, only that the defendants' share will increase, since the share of the grandfather will fall into their hands. No kartha can alienate the entire extent of an ancestral property by way of a settlement deed. In such situation, being a suit for partition, liberty must be given to the parties to bring forth all the pleadings to the table. By allowing the amendment, neither is the cause of action going to change nor is the frame of suit going to change. It is here Mr.S.Rajmakesh, learned counsel vehemently contended that the amendment is barred by limitation. The issue of limitation is a mixed question of law and fact and that has to be gone into only at the time of trial. If the challenge to the settlement deed is barred by



time then all that would happen, as I pointed out before is, that the share of the plaintiffs would be reduced and the share of the defendants will increase.

This, in any event, will not affect the result of the suit, which itself is only a suit for partition whereunder a preliminary decree, the shares of the parties alone are declared. The question of filling up of lacuna will not arise because the suit is still pending. I would have held lacuna against the plaintiffs, if the Court had entered in a decree and they were attempting to amend the plaint at the appellate stage. When the parties are still at war before the trial Court, they must be given the fullest available opportunity to place their entire case before the trial Court.

7. In the light of the above, I pass the following order:

(i) All the Civil Revision Petitions are allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

(ii) Liberty is granted to the plaintiffs to amend the plaint. On amendment of plaint, the persons who are beneficiaries to the settlement deed are proper and necessary parties to the suit. Therefore, I.A.No.11 of 2019 is allowed granting liberty to implead the parties.

(iii) Since amendment and impleadment are allowed, the reopen and recall petitions also stand allowed.



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(iv) I make it clear, I have not gone into the merits insofar as the prayer challenging the settlement deed is barred by limitation is concerned. It is open to the defendants to file additional pleadings for that portion of relief is concerned.

27.09.2023

Index: Yes/No
Speaking order/Non-speaking order
vkr

To :

1. The Sub Judge, Rasipuram.



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V.LAKSHMINARAYANAN,J.,

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