



C.R.P.No. 3577 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE T.V.THAMILSELVI

C.R.P.No. 3577 of 2023
and
C.M.P. No. 22389 of 2023

R.K. Ramesh

.. Petitioner

Vs

1.Rupa Rajesh

2.R.R. Vikram

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order and decree dated 04.09.2023 passed in I.A.No.2 of 2023 in O.S.No.1277 of 2022 pending before the XIX Additional City Civil Court and the I.A.No.2 of 2023 may be allowed as prayed for.

For Petitioner : Mr. Menon

For Respondents : Mr. R. Ananth



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ORDER

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This Civil Revision Petition is filed challenging the impugned order passed in I.A.No. 2 of 2023 in O.S.No. 1277 of 2022 on the file of XIX Additional City Civil Court, Chennai, the defendant has preferred this revision.

2. Before the trial Court, the defendant / revision petitioner herein filed an application under Order VI Rule 17 of CPC to amend the written statement as mentioned in the petition. That application was dismissed by the trial Judge holding that the plaintiffs / respondents herein evidence was concluded and when it is posted for defendant's evidence, the defendant / revision petitioner filed an application in I.A.No.1 of 2023 for rejection of the plaint and also filed application in I.A.No.2 of 2023 to amend the written statement. Since the revision petitioner introduced new theory in respect of the property, the same cannot be entertained. Hence, the application was dismissed.

3. Challenging the same, the defendant preferred this revision.



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4. The learned counsel for the petitioner / defendant submits that while filing the written statement, in paragraph No.6, he claimed 1/6th share through her mother in respect of the property purchased by his brother Rajesh stating that, as his mother died intestate, as legal heir of his mother who is entitled to 1/6th share in the property at Nungambakkam. After that, the plaintiff has not taken any steps to include the property in the suit schedule. Therefore, necessity arose for him to file an amendment application by including the said Nungambakkam property in the suit schedule by way of counter claim. But the trial Judge erroneously dismissed the application as it cannot be entertained after the completion of the evidence. Hence, the learned counsel prayed to set aside the finding of the trial Judge.

5. The learned counsel appearing for the respondents / plaintiffs submits that Nungambakkam property is an individual property of the first plaintiff's husband, Rajesh, in which the defendant / revision petitioner has no right but he falsely claiming 1/6th share through his mother, as such is not permissible since his mother also orally relinquished her share in favour of



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her son, Rajesh. Therefore, the claim of the defendant / revision petitioner as such is not maintainable, besides after framing of the issues, he come forward with the application, as such is not permissible. The learned counsel would rely upon the judgment of the Hon'ble Supreme Court of India in ***Ashok Kumar Kalra vs. Wing CDR. Surendra Agnihotri and Others*** in ***SLP (C) No. 23599 of 2018***, more specifically paragraph No.20. The learned counsel further submits that if at all any share is having in the Nungambakkam property, he has to go for a separate suit not in the suit filed by the plaintiffs.

6. The ratio laid down in the above referred case is acceptable but whether it can be applied to the present case, it has to be decided. Admittedly, the suit for partition filed by the plaintiffs / respondents herein in respect of the suit property claimed, as jointly purchased by the first plaintiff's husband, defendant / petitioner herein and their mother but now the defendant / petitioner herein by way of filing the amendment to include the property at Nungambakkam, which was said to be purchased by first plaintiff's husband, Rajesh. Admittedly, at the time of filing the written



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statement itself, the defendant / petitioner claimed 1/6th share through his mother in that property. It is an individual property of Rajesh according to the plaintiffs so it was not included in the suit schedule. However, the defendant claimed 1/6th share in the property not been denied by the plaintiffs by filing reply statement. Now the trial was began, therefore, the defendant / petitioner herein filed application to amend the written statement as well as to receive the counter claim.

7. Admittedly, at the time of filing written statement itself, the defendant / petitioner herein claiming 1/6th share in the Nungambakkam property but the same not been included as suit property by the plaintiffs. To avoid further complication, the defendant now filed application to receive the counter claim as such is permissible in law. Therefore, the ratio laid down in the above case is not applied to the present case. For the reason that already the written statement of the defendant / petitioner herein submitted his counter claim on Nungambakkam property. Therefore, by amending the said prayer as well as the counter claim will not cause any prejudice to the plaintiffs and liberty also granted to the plaintiffs to raise all their defence in



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respect of the Nungambakkam property before the trial Court either by filing
reply statement or through cross examination.

8. Therefore, the reason assigned by the trial Judge is set aside.

Both the parties are directed to cooperate for the trial proceeding and the
Trial Court is directed to dispose the suit within four months from the date
of receipt of copy of this order.

9. In the result, the Civil Revision Petition is allowed. No costs.

Consequently, connected miscellaneous petition is closed.

16.11.2023

Index :Yes/No

Neutral Citation :Yes/No

AT

To

The XIX Additional City Civil Court, Chennai.



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T.V.THAMILSELVI, J.

AT

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