



C.R.P.No.3681 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.08.2023

CORAM

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.3681 of 2019

and

C.M.P.No.24213 of 2019

Mr.K.Kamalanathan

...Petitioner

Vs.

K.Baskar (Deceased)

- 1.A.Kirubakaran
- 2.Mrs.Saraswathi
- 3.Mrs.K.Bharathi
- 4.Minor Nithyapriya

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 03.07.2019 passed in I.A.No.607 of 2018 in O.S.No.130 of 2010 on the file of the Additional District Munsif Court, Alandur.

For Petitioner : Mr.Shabir Ahmed
For Respondents : K.Sheela
for M/s.M.Kempuraj



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ORDER

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This Civil Revision has been filed to set aside the order and decretal order dated 03.07.2019 passed in I.A.No.607 of 2018 in O.S.No.130 of 2010 on the file of the Additional District Munsif Court, Alandur.

2.O.S.No.130 of 2010 is a suit for permanent injunction. Pending the suit in the year 2018, I.A.No.607 of 2018 was filed for the amendment of plaint.

3.It is the case of the Petitioner/Plaintiff that he and his brothers had partitioned the property measuring about 828 sq.ft. The first defendant had started putting up construction over the said property, which had been allotted to the plaintiff. Therefore, he came forward with a claim to amend the plaint. In the amendment, several prayers were sought for. The plaintiff wanted the defendant to surrender the possession, insofar as the above said 828 sq.fts is concerned. The plaintiff valued the 'B' Schedule property for a sum of Rs.11,10,000/-. The said application was resisted denying the averments with regard to partition.



4.The Learned Additional District Munsif Judge, Alandur dismissed the application stating that no proof had been adduced by the Plaintiff for the purpose of partition between the family members and the owner and as to how they evaluated the property, for delivery of vacant possession at a sum of Rs.11,10,000/-.

5.I have heard Mr.Shabir Ahmed, learned Counsel for the Petitioner and K.Sheela for M/s.M.Kempuraj, learned Counsel for the Respondents and perused all the materials available on record.

6.The Learned Additional District Munsif Judge, Alandur has dismissed the aforesaid I.A.No.607 of 2018 in O.S.No.130 of 2010 on the ground that the Petitioner/Plaintiff has not given any evidence with respect to the proof of amendment.

7.At the time of considering an application for amendment, a Court has to see, whether the amendment will change the cause of action in the suit or such amendment is barred by time or limitation. If both do not exist, a plaintiff is entitled to seek for amendment. The question of proof does not arise at the time of considering an amendment application. That will be like putting cart before the horse.



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8.I have gone through the amendments, neither does it change the cause of action nor is it barred by limitation. Consequently the above said I.A.No.607 of 2018 in O.S.No.130 of 2010 is allowed. The order dated 03.07.2019 is set aside. The Petitioner/Plaintiff is granted leave to amend the plaint for which the defendant will file a written statement to the amended plaint.

9.With the above said directions and discussions, the Civil Revision Petition is allowed. No Costs. Connected Miscellaneous Petition is closed.

23.08.2023

nst

Index : Yes /No

Speaking Order : Yes/No

Neutral Citations : Yes/No

To:

The Additional District Munsif Judge
Alandur.



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V. LAKSHMINARAYANAN.J,

nst

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