



WEB COPY

CRP(PD)No.3807



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

**C.R.P.(PD)No.3807 of 2017
and C.M.P.No.17732 of 2017**

K.Sarasvathi

... Petitioner

Vs.

- 1.Periyathai @ Lingammal
- 2.Mohan
- 3.Sekar
- 4.Baskar
- 5.Balamurugan
- 6.Vijaya
- 7.Meenakshi
- 8.Varalakshmi
- 9.Nandakumar
- 10.M.K.Kalilingan
- 11.Subashini (exonerated)
- 12.S.Mathivanan
- 13.R.D.Saravanan
- 14.Kanagaraj
- 15.Sekar

... Respondents

Prayer: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against the fair and decretal order dated 17.02.2017 made in I.A.No.111 of 2013 in



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O.S.No.21 of 2012 on the file of the III Additional District Court, Tirupattur, Vellore District.

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For Petitioner : Mr.K.Thiruvalluvan

For R2 : Mr.K.Umar

For RR1, 3 to 5,
12 & 15 : No appearance

For RR6, 7 & 10 : Mr.PA.Sudesh Kumar

For R9 : Mr.G.Ethirajulu

ORDER

The revision arises against an order passed by the III Additional District Court, Tirupattur, Vellore District, in I.A.No.111 of 2013 in O.S.No.21 of 2012, dated 17.02.2017.

2. The civil revision petitioner is the plaintiff. The suit in O.S.No.21 of 2012 is for partition. An application in I.A.No.111 of 2013 was filed by the plaintiff for an amendment seeking for a declaration that the document dated 09.11.2000, which is namely, a previous partition deed, entered into between the parties, as null and void. The said amendment application was dismissed on the ground that a new prayer is barred by limitation.



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3. The explanation of the plaintiff is that she came to know about the partition deed only when the written statement was filed by the defendants. The plaint was filed on 22.06.2008. The written statement was filed by the 2nd defendant on 17.08.2011. The amendment application was filed on 07.10.2013 i.e., within a period of three years from the date of filing of the written statement. Therefore, the question of limitation does not arise.

4. However, Mr.G.Ethirajulu, learned counsel for the 9th respondent would submit that the valuation is under Section 25(d) of the Tamil Nadu Court fees and Suit Valuation Act (hereinafter referred to as 'the Act'), which is improper and it should be only under Section 40 of the Act, as admittedly, the plaintiff is a party to the document.

5. I do not want to go into the issue whether the valuation is under Section 25(d) or Section 40 of the Act, because the scope before me is only an order under Order VI Rule 17 of C.P.C. I do not want to exceed the scope. Nonetheless, the objections raised by Mr.G.Ethirajulu, will have to be probed by the trial Court after the amendment is allowed. The 8th defendant/9th respondent is given liberty to raise this issue as a preliminary issue under Order XIV Rule 1 of C.P.C. as to whether the amended prayer requires stamp duty under Section 25(d) or Section 40 of the Act. Suffice to say, the amendment does not change the cause of action of the suit nor does it change the relief



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sought for.

6. Therefore, the amendment application is allowed. Leave is granted to the plaintiff to amend the plaint. Liberty is granted to the defendants to raise their objections on the Court fee at appropriate stage.

7. With the above directions, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

19.07.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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To

III Additional District Judge
Tirupattur, Vellore District.



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