



CRP No.4206 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2023

CORAM:

THE HONOURABLE Mr. JUSTICE LAKSHMINARAYANAN

CRP No.4206 of 2017
and CMP No.19727 of 2017

K.Venkatesh

... Petitioner

Vs

1.D.Revathi
2.S.R.Moorthi
3.R.Manoharan
4.R.Eswari
Kuppayee (died)
5.B.Sabari
6.S.Andiappan
7.R.Marayee
8.S.Kulanthapaian
9.A.Sithamooan
10.A.Muthusamy
11.K.Kuppusamy
12.K.Mani
13.K.Kumaresh
14.A.Pavayee

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 24.08.2017 passed by



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the learned Subordinate Judge, Tiruchengode in I.A.No.460 of 2017 in
O.S.No.558 of 2008.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondents :RR.2 to 5,8,10,11,14– served-no appearance
RR.6,7 & 9 – Died -steps due
RR.1,12 and 13 – Not ready in notice

ORDER

An amendment was allowed in a suit for partition. The amendment only clarifies the stand taken by the plaintiff previously. The plaintiff was constrained to file the amendment application on account of the fact that the stand taken in the written statement was that the legal heir of one Sidhamooppan was not made as a party. The plaintiff merely clarified in the written statement that Sidhamooppan and his brothers viz., Andimooopana and Kulanthaipaiyan had orally partitioned their property during their life time.

2. I have gone through the amended pleadings. It does not change the cause of action, the relief nor frame of the suit. In a suit for partition, the question of limitation also does not arise. Learned counsel for the revision



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petitioner would vehemently argue that the proviso to Order 6 Rule 17 of Civil Procedure Code is attracted and therefore, they have not shown due diligence. Due diligence is not a straight jacket rule. The plaintiff presented the suit in the year 2008. The written statement was filed after six long years in the year 2014. It is only on filing of the written statement, the plaintiff came to know about the plea viz., non impleading of necessary parties. Therefore, she has filed an amendment application only to clarify the position that she had already taken in the plaint. The plaintiff had proceeded on the ground that the property was already partitioned between Sidhamooppan and his brothers. Since the defendants raised a new plea of non-impleading necessary parties, she was constrained to file an application for amendment.

3. As already pointed out, the amendment does not change the cause of action nor does it affect the frame of the suit. In any event, the trial Court has exercised its discretion, which I do not want to interfere, under Article 227 of the Constitution of India.



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V.LAKSHMINARAYANAN,J.,

sr

4. In the result, the Civil Revision Petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

Speaking order/Non-speaking order

sr

To

The Subordinate Court, Tiruchengode

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