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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 03.03.2023

Delivered On: 06.04.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CRP.No.362 of 2023
and
C.M.P.No.3012 of 2023

1. Durai
2. Natarajan
3. Selvam ... Petitioners/Petitioners/Defendants 1 to 3

Vs.

1. Pattammal
2. Alamelu
3. Rajeswari ... Respondents/Respondents 1 to 3/Plaintiffs
4. Ellammal
5. Gopalakrishnan
6. Dhanalakshmi ... Respondents/Respondents 4 to 6/
Defendants 4 to 6

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal Order dated 19.09.2022 passed in I.A.No.1/2021 in O.S.No.88/2010 by the learned Additional Subordinate Judge, Ponneri.

For Petitioners : Mr.E.Prabu
for Mr.S.Mohan

For Respondents : Mr.R.Krishnaswamy
Caveator for R1 to R3



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ORDER

The Defendants 1 to 3 in O.S.No.88/2010 had filed this Revision Petition seeking to set aside the Order passed by the learned Additional Sub Judge, Ponneri in dismissing the Petition in I.A.No.1/2021 in O.S.No.88/2010, by an Order dated 19.09.2022. The Plaintiffs are mother and sisters of the Defendants. They had filed the Suit for partition.

2. The learned Counsel for the Revision Petitioners invited the attention of this Court to the averments in the Plaint and the Scheduled property in the Plaint in O.S.No.213/2008. The properties were situated in Verkadu Village, Gummidipoondi Taluk, Tiruvallur District which is described in the Scheduled property under serial Nos.1 to 8 and also in Applavaram Village, Gummidipoondi Taluk, Tiruvallur District which are described in Serial Nos.1 to 10 separately and the properties in Old Gummidipoondi Village which are described in Serial Nos.1 to 4 separately. The Suit was filed for partition. In the Plaint itself the Plaintiffs had stated that the properties were ancestral properties. It was acquired by the State of Tamil Nadu and with that the award amount of



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Land Acquisition, the Suit properties were purchased. The daughters were given due share in the L.A.O.P award. The Plaintiffs are entitled to 3/8th share in the Suit Property. The Defendants 1 to 3 in the Suit tried to knock away the entire amount which was duly resisted by the Plaintiffs. The objection letter of the Plaintiffs dated 19.09.2003 and stop payment order to the Bank was enclosed in the Suit. The Plaintiffs caused legal notice to the departments concerned and the photostat copy enclosed with the Plaint. The proceedings of the DRO regarding the acquisition is also enclosed herewith the Plaint. In order to deprive the Plaintiffs' right over the Suit properties, Elumalai Naicker/the Husband of the first Plaintiff and father of Plaintiffs – 2 and 3/Defendants 1 to 3 and grandfather of Defendants 4 and 5 along with his sons divided the Suit properties through a registered partition deed dated 20.03.2000. The above partition is invalid since the daughters were not included. On the date of partition, the daughters were having share in the Suit properties, especially when the award amount was equally distributed. The Plaint averments stated that the properties are ancestral in nature. Several oral requests to the Defendants ended in vain. The Defendants were not taking care of the mother/first Plaintiff. Therefore, she is residing with



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the third Plaintiff. Therefore, the Plaintiffs had filed the Suit for partition. The 6th Defendant is also the daughter of the first Plaintiff since she had not joined the other Plaintiffs and she had been impleaded as 6th Defendant.

2.1. It the contention of the learned Counsel for the Petitioners that the Defendants 1 to 3 had filed I.A.No.1/2021 seeking to amend the Plaint by executing the property that were sold by the first Plaintiff to the Plaintiffs 2 and 3. Since the partition had been sought, the properties in the family of the Plaintiffs and Defendants had to be included in the Scheduled properties. The Defendants 1 to 3 in the written statement had already stated that the Suit is not maintainable as the Suit properties were not ancestral properties. It was a self acquired property of Elumalai Naicker. D-4 and D-5 are widow and son of the deceased Govindaraj predeceased son of the first Plaintiff.

2.2. In the written statement, the Petitioners as Defendants had disputed the claim of the Plaintiffs. Also, in the written statement, Defendants 1 to 3 had stated that the gift settlement deed executed by the



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first Plaintiff in favour of the Plaintiffs 2 and 3 which were registered as Document No.1800/2000 dated 18.09.2000. The properties mentioned in the partition deed dated 20.03.2000 are ancestral properties and also self acquired properties of her deceased husband. The Defendants in the written statement had stated that the first Plaintiff had executed the sale deed in respect of the properties situated at Nangapallam Village which had not been included in the Plaint. She had sold the property by executing sale deed in favour of the second Plaintiff, sale deed dated 18.09.2000 as Document No.1799/2000 for Rs.8,800/- and Rs.12,800/-. Likewise first Plaintiff executed sale deed document No.1797/2000 dated 18.09.2000 and Document No.1798/2000 dated 18.09.2000 for Rs.12400 and Rs.8800/- respectively in favour of the third Plaintiff. Gift settlement deed dated 18.09.2000 as Document No.1800/2000 for Rs.70,700/- in favour of the Plaintiffs 2 and 3. The Plaintiffs 2 and 3 have sold the properties which were given by their mother vide gift settlement deed No.1800/2000, dated 18.09.2000.

2.3. The claim of the Defendants in the written statement that the Plaintiffs are not entitled to claim partition as they had been married prior



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to the Hindu Succession Act, as per the amended Act, 2005. Before the amended Act came into force, the daughters were married, the second Plaintiff was married in the year 1988. 6th Plaintiff was married in the year 1981. Third Plaintiff was married in the year 1994. The Tamil Nadu Amendment Act to Hindu Succession Act was applicable to unmarried Hindu woman as on 25.03.1989. Subsequent amendment in the Hindu Succession Act, 2005 brought by the Central Government enabling all Hindu daughters to claim equal share in the ancestral property. The claim of the Defendants that Elumalai Naicker died in the year 2001. Therefore, the daughters cannot claim partition after the death of their father. That was denied by the Plaintiffs in the reply statement. Before commencement of trial, the Defendants 1 to 3 sought amendment in the Plaint to include the properties that were sold by the first Plaintiff to Plaintiffs 2 and 3 and the property that was settled by the first Plaintiff to Plaintiffs 2 and 3. It is the contention of the Defendants that the properties sold by the Plaintiffs 2 and 3, subsequent to the gift settlement deed by the first Plaintiff in favour of the Plaintiffs 2 and 3 also shall be subject to partition. Therefore, the Defendants 1 to 3 had filed



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I.A.No.1/2021 in O.S.No.88/2010 to amend the properties in the Suit.

The Plaintiffs as Respondents vehemently objected to the same stating that the properties were self acquired properties of the mother and she had obtained it after selling her Sreedhana Articles. The learned Judge had dismissed the Petition by observing as follows:

“... when the title deeds in respect of the Petition mentioned properties stood in the name of the 1st respondent, claiming rights over those properties amounts to pleading benami which is clearly prohibited by virtue of the benami transactions prohibition act, the petitioners have filed this affidavit only to protract the proceedings and with a view to delay the passing of the preliminary decree and to deprive the Respondents 1 -3 of their valuable right to claim their respective shares in the suit properties.

Given this, it is noted that 3rd petitioner has mentioned that the proposed Scheduled mentioned lands were purchased by his father Elumalai in the name of 1st respondent, out of his income and the income of the petitioners, but the 3rd petitioner did not file any documents to prove the source of income or nature of the work of his late father. The oral family agreement as stated by the petitioners, are not proved by any evidence. The co-ownership as claimed by the petitioners are not proved beyond doubt as the petitioners did not provide any evidence that include their share in purchasing the property. The 3rd petitioner has failed to prove his possession and enjoyment of the suit property to support his statement that the respondents are attempting to dislodge him from the suit property. As per the averments made by the petitioners in para 7, the petitioners have stated that sale deeds were taken in the name of mother, the 1st respondent/Plaintiff by their father only as benami. It is noted that under the Benami Transactions (Prohibition) Amended Act, 2016 a Benami Transaction does not include (I) a Karta, or a member of a Hindu Undivided Family as the case may be, and the property is held for his benefit of other



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members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu Undivided Family, (ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity. Hence the averments that the 1st respondent/Plaintiff is a benami for petitioner's father's property is a misconception on the part of the petitioners. Hence this petition filed by the petitioner is dismissed.

In the result, the petition stands dismissed. No costs.”

2.4. Aggrieved by the same, the learned Counsel for the Revision Petitioner/Defendants 1 to 3 stated that the amendments are to be allowed liberally. Further, the learned Judge had discussed about the evidence in amendment petition. There is no question regarding evidence, amendments that are liberally allowed. The observation by the learned Judge that the Petitioners had not furnished any evidence as their proof of contentions seeking amendment cannot be sustained.

2.5. In support of his contention, the learned Counsel for Revision Petitioners relied on the following rulings:

(I) **MANU/TN/4909/2018** in the case of **M.Chidambaram Vs. M.Ramamoorthy and Ors.** The relevant portions is extracted hereunder:

“23. In view of the aforesaid cited supra, i am of the view that in a suit for partition, the defendant is also entitled to file an



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application for amendment to include the properties, which were left by the Plaintiffs. Admittedly, the petitioner has not produced any contra judgment showing that the defendant was not empowered to file an application for amendment to include properties in the partition suit.

28. In a partition suit, both the Plaintiffs and defendant are considered to be on the same pedestal to seek for a decree. Therefore the proposed amendment seeking inclusion of properties would not alter the character and the very nature of the suit, as the trial has not begun so far.

29. What is important is the court has to see whether such amendment is imperative for proper and effective adjudication of the case and that the amendment is bonafide and in case, such an amendment is ordered, whether any prejudice would be caused to the other side. Further, the court must also consider as to whether in the event the amendment is refused, it may lead to injustice or multiple litigation. Admittedly, in the case on hand, for proper adjudication of the matter, the amendment, as sought for by the first respondent, is necessary and by the proposed amendment, no prejudice would be caused to the petitioner. On the other hand, if the prayer is refused, definitely, it may cause hardship to the defendants in the suit.

30. For the foregoing reasons, I am of the view that the trial court was right in allowing the petition for amendment seeking to include certain properties in the plaint schedule and that there is no illegality and/or perversity in the order of the trial court.”

(II) 2010 (4) CTC 331 in the case of **A.A.Ganga and another Vs.**

A.R.Usha and others. The relevant portion is extracted hereunder:

“Code of Civil Procedure, 1908 (5 of 1980), Order 6, Rule 17 –Plaintiff filed suit for partition-Defendant filed Application to include few properties which were omitted to be included in plaint– Trial court rejected application as belated- challenged–Defendants are entitled to include those properties–Contention of Plaintiff that he is dominus litus and can decide as to impleading of parties and



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inclusion of property, held, unsustainable–Impugned order set aside– Civil Revision Petition Allowed.

Code of Civil Procedure, 1908 (5 of 1908), Order 6 Rule 17 – Amendment of plaint–In a suit for partition, Plaintiffs are Defendants and Defendants are Plaintiffs–Defendant is entitled to include property left out by Plaintiff – amendment allowed to have a complete adjudication and to avoid future litigation–Contention of Plaintiff that he is dominus litus, held, unjustified–Ramasamy v P.Marappan, 2005 (3) MLJ 663 (dissented).

Code of Civil Procedure, 1908 (5 of 1908), Order 6 Rule 17–suit for partition–Defendant sought for amendment to include a property left out to be included in plaint- Trial court while trying application for amendment gone into merits of case–Held, improper–Order of trial court set aside.”

2.6. In the reported Judgment, it was a case where the trial Judge allowed the amendment against which the Plaintiffs had preferred the Civil Revision Petition. Therefore, the Civil Revision Petition was dismissed. The facts of the reported ruling squarely applies to the facts of this case. Therefore, here Defendants had approached this Court seeking to set aside the dismissal to the amendment before the learned second Additional Sub Judge, Ponneri.

2.7. Also, the learned Counsel for the Revision Petitioner invited the attention of this Court to the Rulings reported in



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MANU/TN/4909/2018 in the case of ***M.Chidambaram Vs.***

M.Ramamoorthy and Ors and **2010 (4) CTC 331** in the case of ***A.A.Ganga and another Vs. A.R.Usha and others***, the trial Court had considered the evidence and merits of the case while rejecting the amendment. Aggrieved by the same, the Revision Petition was filed. Here also, the Defendants were the Petitioners herein. Therefore, the facts of the reported ruling squarely applies to the facts of this case.

3. Mr.R.Krishnasamy, learned Counsel for the Respondents/Plaintiffs before the trial Court vehemently opposed the line of the argument of the learned Counsel for the Revision Petitioner stating that the amendment sought for by the Petitioners was rightly rejected. In the affidavit filed by the Petitioners had clearly stated that the property in the name of the first Plaintiff was purchased by the father of the Petitioners as Benami property. That is why, the learned Judge had rightly rejected such contention as per Section 4 of the Prohibition of Benami Property Transactions Act.

3.1. The learned Counsel for the Respondents submitted that it is



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to be noted that the Petition originally filed before the learned Principal District Judge, Tiruvallur as O.S.No.213/2008 and subsequently transferred on the point of pecuniary jurisdiction and territorial jurisdiction to the Sub Court, Ponneri and re-numbered as O.S.No.88/2010. Only with an intention to protract the proceedings, the Petition in I.A.No.1/2021 was filed belatedly after commencement of trial.

3.2. The learned Counsel for the Respondents invited the attention of this Court to the explanation in the Benami Property Transactions Act, 1988 reads thus:

“(8) “benami property” means any property which is the subject matter of a benami transaction and also includes the proceeds from such property;

(9) “benami transaction” means-

(A) a transaction or an arrangement -

(a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and

(b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, except when the property is held by -

(i) a Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;



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(ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 (22 of 1996) and any other person as may be notified by the Central Government for this purpose;

(iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;

(iv) any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual;”

3.3. Further the learned Counsel for the Respondents submitted that the Plaintiffs had stoutly denied the claim of Benami by filing reply statement to the written statement in which the Plaintiffs had clearly stated that the first Plaintiff acquired property in her own name, after selling her Sreedhana Articles. Therefore, the dismissal of I.A, based on the enquiry of the learned Judge refusing to include the property that was self-acquired by the first Plaintiff/mother of the Defendants 1 to 3 and Plaintiffs 2 and 3 and Defendant-6 which were gifted by her to her daughters that cannot be included in the Suit for partition. When the Act of the Hindu Succession Act as amended in 2005 had clearly stated that the daughters are entitled to partition of a coparcenary property. Here,



the Plaintiffs had sought partition in the joint family properties whereas the Petitioners in I.A/Defendants 1 to 3 sought to include Sreedhana property of the mother which cannot be a subject matter of coparcenary property. Under those circumstances, the amendment sought for is not sustainable and the learned Additional Sub Judge has rightly dismissed the Petition.

3.4. In support of his contention, the learned Counsel for the Respondents relied on the following rulings:.

(i) **(2008) 5 SCC 117** in the case of **Chander Kanta Bansal Vs.**

Rajinder Singh Anand. The relevant portion is extracted hereunder:

“13.The entire object of the said amendment is to stall filing of applications for amending a pleading subsequent to the commencement of trial, to avoid surprises and the parties had sufficient knowledge of the others case. It also helps in checking the delays in filing the applications. Once, the trial commences on the known pleas, it will be very difficult for any side to reconcile. In spite of the same, an exception is made in the newly inserted proviso where it is shown that in spite of due diligence, he could not raise a plea, it is for the court to consider the same. Therefore, it is not a complete bar nor shuts out entertaining of any later application. As stated earlier, the reason for adding proviso is to curtail delay and expedite hearing of cases.

16.The words "due diligence" has not been defined in [the Code](#). According to Oxford Dictionary (Edition 2006), the word "diligence" means careful and persistent application or effort.



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"Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's Law Dictionary (Eighth Edition), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. "Due diligence" means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain-Dyspnea (Permanent Edition 13A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs. It is clear that unless the party takes prompt steps, mere action cannot be accepted and file a petition after the commencement of trial. As mentioned earlier, in the case on hand, the application itself came to be filed only after 18 years and till the death of her first son Sunit Gupta, Chartered Accountant, had not taken any step about the so-called agreement. Even after his death in the year 1998, the petition was filed only in 2004. The explanation offered by the defendant cannot be accepted since she did not mention anything when she was examined as witness.

19. As observed earlier, the suit filed in the year 1986 is for a right of passage between two portions of the same property dragged for a period of 21 years. In spite of long delay, if acceptable material/materials placed before the court show that the delay was beyond their control or diligence, it would be possible for the court to consider the same by compensating the other side by awarding cost. As pointed out earlier, when she gave evidence as D.W.1, there was no whisper about the written document/partition between the parties. On the other hand, she asserted that partition was oral. Now by filing the said application, she wants to retract what she pleaded in the written statement, undoubtedly it would deprive the claim of the Plaintiff. We are also satisfied that she failed to substantiate inordinate delay in filing the application that too after closing of evidence and arguments. All these aspects have been considered by the High Court. We do not find any ground for interference in the order of the High Court, on the other hand, we are in entire agreement with the same."



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(ii) (2009) 2 SCC 409 in the case of *Vidyabai and others Vs.*

Padmalatha and another. The relevant portion is extracted hereunder:

“10. By reason of the Civil Procedure Code ([Amendment](#)) [Act](#), 2002 (Act 22 of 2002), the Parliament inter alia inserted a proviso to Order VI Rule 17 of the Code, which reads as under:

"Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

It is couched in a mandatory form. The court's jurisdiction to allow such an application is taken away unless the conditions precedent therefor are satisfied, viz., it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial.

11. From the order passed by the learned Trial Judge, it is evident that the respondents had not been able to fulfill the said pre-condition. The question, therefore, which arises for consideration is as to whether the trial had commenced or not. In our opinion, it did. The date on which the issues are framed is the date of first hearing. Provisions of the Code of Civil Procedure envisage taking of various steps at different stages of the proceeding. Filing of an affidavit in lieu of examination in chief of the witness, in our opinion, would amount to 'commencement of proceeding'.

19. It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order VI, Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged



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therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint.”

(iii) (2008) 14 SCC 364 in the case of **Rajkumar Gurawara (Dead) through LRs. Vs. S.K.Sarwagi and Company Private Limited and another**. The relevant portion is extracted hereunder:

“13. To put it clear, order 6 rule 17 CPC confers jurisdiction on the court to allow either party to alter or amend his pleadings at any stage of the proceedings on such terms as may be just. Such amendments seeking determination of the real question of the controversy between the parties shall be permitted to be made. Pre trial amendments are to be allowed liberally than those which are sought to be made after the commencement of the trial. As rightly pointed out by the High court in the former case, the opposite party is not prejudiced because he will have an opportunity of meeting the amendment sought to be made. In the latter case, namely after the commencement of trial, particularly after the completion of the evidence, the question of prejudice to the opposite party may arise and in such event, it is incumbent on the part of the court to satisfy the conditions prescribed in the proviso.

18. Further it is relevant to point out that in the original suit, the Plaintiff prayed for declaration of his exclusive right to do mining operations and to use and and sell the suit schedule property and in the petition filed during the course of arguments, he prayed for recovery of possession and damages from the second defendant. It is settled law that the grant of application for amendment be subject to certain conditions, namely, (i) when the nature of it is changed by permitting amendment; (ii) when the amendment would result in introducing new cause of action and intends to prejudice the other party; (iii) when allowing amendment application defeats the law of limitation. The Plaintiff not only failed to satisfy the conditions prescribed in proviso to Order 6 Rule 17 but even on merits his claim is liable to be rejected. All these relevant aspects have been duly considered by the High Court



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and rightly set aside the order dated 10-03-2004 of the Additional District Judge.”

3.5. It is the further contention of the learned Counsel for the Respondents that the Petition was filed belatedly, after trial commenced. When P.W-1 was examined, she had filed affidavit for examination-in-chief and marked documents, only with an intention to delay the trial, the Petition for amendment was filed wantonly, knowing fully well that the Sreedhana Articles of the mother was sold to acquire the property in her name in which she had clearly stated in the reply statement filed by the Plaintiffs to the written statement filed by the Defendants. When the Sreedhana Articles of the mother was sold and acquired property in her own name, the mother is entitled to sell the property to her daughters or settle property to her daughters as per her wish. That need not be brought into the Suit for partition as joint family property. Therefore, after commencement of trial, as per Code of Civil Procedure as amended in 2002 cannot be allowed. If it is to be allowed, the affidavit of the Petitioners shall contend that the words with due diligence, the Petitioner was unable to seek amendment at the earliest time. Here that was not the case. Only after the trial commenced, the Defendants 1 to 3 had filed this



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Petition with an ulterior motive to drag the proceedings and delay the trial. Therefore, the learned Additional Judge, Ponneri has rightly dismissed the Petition on the ground that the Benami Property Transactions does not attract in this case and it was a belated amendment as per the Code of Civil Procedure as amended in 2002, after commencement of trial.

4. By way of reply to the submission of the learned Counsel for the Respondents, the learned Counsel for the Petitioners stated that whether it was a Benami property or property acquired by the mother from her Sreedhana Articles. That are to be considered only during the trial and not at the stage of enquiry. The rulings cited by the learned Counsel for the Petitioners in *MANU/TN/4909/2018* in the case of ***M.Chidambaram Vs. M.Ramamoorthy and Ors*** and ***2010 (4) CTC 331*** in the case of ***A.A.Ganga and another Vs. A.R.Usha and others*** wherein clearly stated that the merits of the case need not be considered while considering the amendment. It is not acceptable as per the Ruling of the Hon'ble Supreme Court as well as Hon'ble High Court in ***(i) (2008) 5 SCC 117*** in



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the case of *Chander Kanta Bansal Vs. Rajinder Singh Anand*, (ii) (2009) 2 SCC 409 in the case of *Vidyabai and others Vs. Padmalatha and another*, and (iii) (2008) 14 SCC 364 in the case of *Rajkumar Gurawara (Dead) through LRs. Vs. S.K.Sarwagi and Company Private Limited and another*. Further, it is the contention of the learned Counsel for the Petitioners that here in this case, the Plaintiffs had only filed affidavit for examination-in-chief that cannot be considered as trial commenced. For the word '**trial commenced**', the Hon'ble Supreme Court had referred to the Constitution Bench for decision, the Constitution Bench yet to be delivered the Judgment. The word '**commencement of trial**' cannot be put to use in considering pre-trial and post trial commencement of trial. Therefore, the submission of the learned Counsel for the Respondents regarding that the Order of the learned Additional Sub Judge, Ponneri in dismissing the Petition, the trial had commenced. Therefore, after commencement of trial, the same cannot be allowed to be rejected. The other Rulings cited are not applicable to the facts of this case whereas the rulings cited by the learned Counsel for the Revision Petitioners in *MANU/TN/4909/2018* in



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the case of ***M.Chidambaram Vs. M.Ramamoorthy and Ors*** and ***2010***

(4) CTC 331 in the case of ***A.A.Ganga and another Vs. A.R.Usha and***

others are squarely applies to the facts of this case. Therefore, this

Petition is to be allowed and the Order passed by the learned Additional

Sub Judge, Ponneri in dismissing the Petition in I.A.No.1/2021 in

O.S.No.88/2010 is to be set aside.

4.1. The Suit filed in the year 2008 and the trial commenced in the year 2021. After commencement of trial, this Petition had been filed belatedly. For the conduct of the Defendants, the Suit had been pending from the year 2008 onwards. Therefore, this is a belated Petition and is to be dismissed in the light of the rulings cited by the learned Counsel for the Petitioners in ***MANU/TN/4909/2018*** in the case of ***M.Chidambaram Vs. M.Ramamoorthy and Ors*** and ***2010 (4) CTC 331*** in the case of ***A.A.Ganga and another Vs. A.R.Usha and others***, it is clearly stated that the amendment shall be allowed liberally before commencement of trial. Here, the trial had commenced, the Suit filed in the year 2008. After commencement of trial only, this Petition in I.A.No.1/2021.



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Therefore, it was rightly rejected. Therefore, this Civil Revision Petition does not warrant any merit and is to be dismissed.

5. Point for consideration:

Whether the Petition for amendment filed by the Defendants in the suit in I.A.No.1 of 2021 in O.S.No.88 of 2010 pending before the learned Additional Sub Judge, Ponneri is to be allowed and the order of dismissal passed by the learned Additional Sub Judge, Ponneri, dated 19.09.2022 is to be set aside?

6. On consideration of the rival submissions and on perusal of the Plaint, Written statement, Reply statement, affidavit of the Petitioners, Counter of Respondent and the Order passed by the learned Additional Sub Judge, Ponneri in I.A.No.1/2021 in O.S.No.88/2010 and the rulings cited by the rival parties, the submission of the learned Counsel for the Revision Petitioners cannot at all be accepted in the light of the specified fact that the mother of the Plaintiffs and Defendants 1 to 3 had clearly stated in the reply statement that the properties were acquired in her



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name by selling her Sreedhana Articles. In the Suit for partition, the daughters and wife of Elumalai Naicker had sought for partition of the properties in the joint possession and enjoyment of the family of Elumalai Naicker. As per the Hindu Succession Act as amended by the Government of India in the year 2005 wherein there is no discrimination between the date of marriage of daughters. Therefore, the learned Additional Sub Judge, Ponneri had rejected the contention raised by D-3 about Benami Transactions. Under those circumstances, after the Plaintiffs had examined herself as P.W-1 and marked documents, the Defendants 1 to 3/sons of Elumalai Naicker seeking to include the property purchased by their mother from her Sreedhana Articles. From the sale proceeds of Sreedhana Articles the property purchased by the mother which she had already gifted to her daughters cannot be included in the Suit for partition of the joint family properties as those are treated as self acquired properties of the mother. The rulings cited by the learned Counsel for the Petitioners in ***MANU/TN/4909/2018*** in the case of ***M.Chidambaram Vs. M.Ramamoorthy and Ors*** and ***2010 (4) CTC 331*** in the case of ***A.A.Ganga and another Vs. A.R.Usha and others*** will not help the case of the Revision Petitioners. The rulings quoted by the



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Learned Counsel for the Respondents stated that the amendment Petition has to be allowed liberally before the commencement of trial. The Defendants in the partition Suit are also treated as Plaintiffs in the Suit. The Defendants can also file amendment Petition to include the properties left out in the partition. Before commencement of trial, amendment shall be allowed. Also, before disposing the amendment Petition, the amendment Petition shall be considered liberally and at the same time, the merits of the Suit need not be considered in the amendment Petition. That is the gist of the rulings cited by the learned Counsel for the Revision Petitioners reported in *MANU/TN/4909/2018* in the case of *M.Chidambaram Vs. M.Ramamoorthy and Ors* and *2010 (4) CTC 331* in the case of *A.A.Ganga and another Vs. A.R.Usha and others*. Those facts will not help the Petitioner's case. Here, because the Defendants 1 to 3 in the written statement had claimed that the properties in the name of the mother was acquired by the father. The mother being Benami of father and in continuation of the same, only I.A.No.1/2021 was filed in O.S.No.88/2010. The contents in the written statement was stoutly denied in the reply statement filed by the mother and sisters of the



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Defendants stating that the mother had acquired properties by selling off her Sreedhana Articles and she had gifted/sold property to the daughters.

7. As per the Hindu Law, the daughters are entitled to Sreedhana Articles of their mother. Here partition had been sought by the daughters in the co-parcenary properties of the father which was treated as joint family properties. Therefore, the attempt of the Defendants to include the Sreedhana Articles of the mother cannot be accepted. Hence rejected. Also, the reported ruling relied by the learned Counsel for the Revision Petitioner states that the amendment shall be allowed liberally before the commencement of trial. It is to be noted that the Suit was filed in the year 2008 when the Plaintiffs had filed their affidavit for examination-in-chief and marked documents, the attempt of the Defendants to include the properties in the name of the mother who had sold it or gifted it to her daughters/Plaintiffs 1 and 2 and 6th Defendant cannot be included in the father's properties in which partition is sought. Therefore, this Revision has no merit. The Order passed by the learned first Additional Sub Judge, Ponneri is found acceptable and reasonable which does not warrant interference under Article 227 of Constitution of India. In the



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In the light of the ruling cited by the learned Counsel for the Revision Petitioners as well as learned Counsel for the Respondents which reiterates that after commencement of trial, the amendment cannot be allowed. The other submission is that the subject matter of commencement of trial is to be decided as it yet to be decided by the Hon'ble Supreme Court and the subject matter is referred to the Constitutional Bench by the Hon'ble Supreme Court. Therefore, the argument of the learned Counsel for the Revision Petitioners is that the trial commenced cannot be accepted is found unacceptable as per the present procedures followed by the trial Courts. Once the trial had commenced, the Plaintiffs are in the Witness Box at this stage the Defendants had filed this Petition that cannot be a ground to ignore the trial that had commenced and the same is rejected. In the light of the above discussion, the point for consideration is answered against the Revision Petitioners. This Civil Revision Petition has no merits and is to be dismissed.

8.The I.A.No.1 of 2021 in O.S.No.88 of 2010 before the learned Additional Sub Judge, Ponneri, seeking amendment of the plaint cannot



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be allowed. The order passed by the learned Additional Sub Judge, Ponneri in dismissing the I.A.No.1 of 2021 in O.S.No.88 of 2010, dated 19.09.2022 is confirmed.

In the result, this *Civil Revision Petition is dismissed.*

The order passed by the learned Additional Sub Judge, Ponneri in dismissing the petition for amendment in I.A.No.1 of 2021 in O.S.No.88 of 2010, dated 19.09.2022 is confirmed. The learned Additional Sub Judge, Ponneri is directed to proceed with the trial and dispose of the Suit in O.S.No.88/2010 as early as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

06.04.2023

dh

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order



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SATHI KUMAR SUKUMARA KURUP, J.

dh

To

1. The Additional Subordinate Judge,
Ponneri.
2. Section Officer,
V.R.Section,
High Court, Madras.

Order made in
CRP.No.362 of 2023

06.04.2023