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C.R.P.Nos.4286 and 4288 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **30.08.2023**

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THE HONOURABLE Mr. JUSTICE V. LAKSHMINARAYANAN

C.R.P.Nos.4286 and 4288 of 2019

and

C.M.P.No.27958 of 2019

C.R.P.No.4286 of 2019:

C.Murugesan (died)

1.M.Subramani

2.M.Rajendran

3.S.Pushpa

4.S.Rani

5.M.Backiam

...Petitioners/Respondents 2 to 6
/Defendants 2 to 6

Vs.

1.S.Pappathi

2.Minor S.Divya

rep. by her mother

1st respondent

... Respondents/Petitioners
/Plaintiffs

C.R.P.No.4288 of 2019:

C.Murugesan (died)

1.M.Subramani

2.M.Rajendran

3.S.Pushpa

4.S.Rani



5.M.Backiam

...Petitioners/Respondents 2 to 6
/Defendants 2 to 6

Vs.

1.S.Pappathi

2.Minor S.Divya

rep. by her mother

1st respondent

... Respondents/Petitioners
/Plaintiffs

PRAYER in C.R.P.No.4286 of 2019: Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 19.10.2019 in I.A.No.186 of 2018 in O.S.No.176 of 2013 on the file of the learned II Additional District -cum- Sessions Judge, Salem.

PRAYER in C.R.P.No.4288 of 2019: Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 19.10.2019 in I.A.No.187 of 2018 in O.S.No.176 of 2013 on the file of the learned II Additional District -cum- Sessions Judge, Salem.

For Petitioners : Ms.Monolisa
for Mr.Marudhachalamurthy
in both petitions

For Respondents : No appearance
in both petitions

COMMON ORDER

C.R.P.No.4288 of 2019:

The suit in O.S.No.176 of 2013 on the file of the learned II Additional District -cum- Sessions Judge, Salem, has been filed by the wife and



daughter of one Subramani for partition. In the partition suit, the relatives have been arrayed as the defendants. Pending the suit, the 3rd defendant/M.Rajendran alienated the property in favour of his wife Sakunthala. This fact came to the notice of the plaintiffs only when the cross examination of the plaintiffs was going on. Immediately, she filed an application to implead the said Sakunthala. This was opposed stating that joint patta had been given in favour of Sakunthala long time ago. The learned Trial Judge was convinced that Sakunthala was a necessary party to the suit and therefore, allowed the application, against which the present revision.

2.Ms.Monolisa, learned counsel for the revision petitioners would strenuously contend on the basis of the counter affidavit filed by her before the Trial Court that the transaction is one hit by *lis pendens* and apart from that, patta bearing No.1133 has been granted for 1/6th share each and therefore, the plaintiffs ought to have filed the application immediately. She would state that Sakunthala is neither a proper nor a necessary party and, therefore, this revision has to be allowed.



3.The respondents have been served, but have not entered appearance.

I have carefully considered the arguments of the learned counsel appearing for the revision petitioners.

4.The point for consideration is whether the person, who purchased the property *pendente lite* is necessary and proper party to the suit?.

5.A Division Bench of this Court in **V.L.Dhandapani v. Revathy Ramachandran and others [2014-3-L.W. 769]** has held that the purchaser can be impleaded as a party. The learned Trial Judge had appreciated the law correctly and allowed the application in a partition suit where the relationship between the parties are not in dispute and the case is unnecessarily pending for ten years.

6.In the light of the above discussion, I am of the clear view that this Civil Revision Petition should fail and accordingly, it is dismissed. The order in I.A.No.187 of 2018 in O.S.No.176 of 2013 on the file of the learned II Additional District -cum- Sessions Judge, Salem, stands confirmed. There shall be no order as to costs.



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7. In a suit for partition, an application was filed in I.A.No.186 of 2018 in O.S.No.176 of 2013 to amend the schedule to include the property. The said application was allowed. Against which, the present revision has been filed.

8. Ms. Monalisa, learned counsel appearing for the petitioners would point out that after the trial has been commenced, the amendment application was moved. According to her, since there was no diligence on the part of the plaintiff, the amendment application should not have been allowed. She would also add that it amounts to filling up of lacuna. Therefore, she would seek for this revision to be allowed and the application filed by the plaintiffs to include the impugned schedule of property to be dismissed.

9. Heard the learned counsel appearing for the petitioners. The respondents though served, have not entered appearance.

10. The suit filed is one for partition. In a partition suit, all the



properties, which belong to the joint family, have to be included in the suit.

In case, it has not been done so, it will be fatal to the parties. If I were to allow the application, another suit is necessarily has to be filed on account of the fact that one property has not been included. Being a partition suit, yet another suit has to be presented on the same cause of action because the cause of action is continuing till all the properties are partitioned. Apart from that, the question of filling up of lacuna does not arise at the stage of trial. The purpose of Code of Civil Procedure is for a fair disposal of the suit. It is not a tool for the punishment or to chastise the parties. Perhaps, the instructions that had been given on the schedule of the property and it was found that one property had been left out. To rectify the same, the application is taken to include the property in the schedule. The amendment neither changes the cause of action nor the issues in the suit. The learned Trial Judge had appreciated the law correctly and allowed the application.

11. Hence, this Civil Revision Petition is dismissed. The order in I.A.No.186 of 2018 in O.S.No.176 of 2013 on the file of the learned II Additional District -cum- Sessions Judge, Salem, stands confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.



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Index : Yes/No

Internet : Yes/No

Speaking order / Non speaking order

mps

To

The II Additional District -cum- Sessions Judge,
Salem.



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V. LAKSHMINARAYANAN, J.

mps

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