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C.R.P(PD).No.4276 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.R.P(PD).No.4276 of 2019
and C.M.P.No.15812 of 2021
and C.M.P.No.27916 of 2019

N.Lakshmmamma (died)

2.K.G.Mohan Babu

3.K.G. Hari Prasad

4.Nivedita

(Petitioners 2 to 4 brought on record as LR's of
the deceased 1st petitioner N.Lakshmmamma vide
court order dt.14.02.2022 made in CMP.15814/21
in CRP.4276/19 by PTAJ)

... Petitioners

Vs.

1.Venkatamma

2.Kitta Reddy

3.Amaranarayana Reddy

... Respondents

PRAYER: Petition filed under Article 227 of the Constitution of India,
seeking to set aside the order and decree dated 14.11.2019 made in
I.A.No.01 of 2019 in O.S.No.68 of 2013 on the file of the Additional Sub-
Court, Hosur.



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For Petitioners : Mr.S.R.Sundar
For Respondents :Mr.S.Kasirajan

ORDER

The present revision is laid by the plaintiff, challenging an order dismissing her application in I.A.No.1 of 2019 for amending the plaint.

2.The plaintiff laid the suit for partition of 9 items of suit property against her mother and two brothers. In her plaint, she has alleged that items 1 to 8 are ancestral properties in the hands of her father, and the 9th item is a self acquired property. However, the defendants in their counter to an application in I.A.No.419 of 2017 had made a statement that the 9th item was also purchased out of the income from items 1 to 8 and that even item 9 partakes the character of an ancestral property. Therefore, the plaintiff has preferred this application for appropriate amendment to the body of the plaint. This apart, she has sought a lesser share in the suit property than what is her due, and therefore even this is sought to be amended.

3.This application was resisted by the defendants, and the trial Court



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dismissed the same on the ground that this was made midway through the trial and hence refused to entertain it. This is now under challenge.

4.Heard both sides.

5.So far as amendment regarding item 9 is concerned, this has already been amended vide order in I.A.No.419 of 2017. This implies that the plaintiff goes to the Court for trial seeking partition of 9 items of ancestral properties. The amendment now sought relates to relief seeking what the plaintiff considers as the correct share to which she is entitled to as regards items 1 to 8.

6.When the plaintiff goes to trial that the properties are ancestral, then the shares to be declared vis-a-vis these properties are mere legal consequence or incidence of law, and it falls within the exclusive domain of the Court. Therefore, even without seeking amendment as is presently attempted, the Court is still under an obligation to declare such share to the plaintiff which she will be entitled to in law, no matter what the plaintiff has sought. Now,



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she having filed an application to make it more convenient, it only requires to be allowed.

7.In fine, this Court considers that this application deserves to be allowed and accordingly allowed. The trial Court is now required to expedite the trial and conclude the trial as expeditiously as possible.

8.This Civil Revision Petition stands allowed accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

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Index : yes / no

Internet : yes / no

Speaking / Non Speaking order

To.

The Additional Sub-Court

Hosur.

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