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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.08.2023
Delivered on : 29.09.2023

CORAM

**THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN
THILAKAVADI**

C.R.P(MD)No.557 of 2023
and
C.M.P(MD)No.2617 of 2022

Sornathammal(Died)
Arunachalathammal(Died)
1.Chellammal
2.Petchimuthu Pandian
3.Mariamammal
4.Rani
5.Santhi
Murugaiah(Died)
6.Shanmugavel
7.Arumugam
8.Gandhimathi
9.Shanmugam
10.Chellapandian
11.Nambirajan

... Petitioners/Petitioners/Plaintiffs

Vs.

Sivanupandian(Died)
1.Chinnammal
2.Petchiammal
3.Pattammal
4.Thalakkaudayar
5.Maharajan
6.Balasankar
7.Amalan
8.Velammal
9.S.Muthu



10.Sornam

11.Malaiyammal @ Seetha

12.Pappa

13.Subbulakshmi

...Respondents/Respondents/Defendants

(Memo dated 20.07.2023 in USR

No.23468 is recorded as the

respondents 9,11 and 12 are given up

vide Court order dated 20.07.2023)

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 19.09.2022 passed in I.A.No.8 of 2022 in O.S.No.136 of 2014 on the file of the Additional Sub-Court, Tirunelveli.

For Petitioners

:Mr.J.Jeyakumaran

For R5

:Mr.T.Selvam

For R1toR4, R6toR8,

R10 and R13

:No appearance

ORDER

This civil revision petition is filed as against the order dated 19.09.2022 passed in I.A.No.8 of 2022 in O.S.No.136 of 2014 by the Additional Sub-Court, Tirunelveli.

2.The revision petitioners as plaintiffs filed the suit in O.S.No.136 of 2014 for partition seeking 4/24 share for the plaintiffs No.1 and 2, 8/24 share for the plaintiffs No.4 to 7, 4/24 share for plaintiffs No.8 to 11. The plaintiffs have mentioned 13 schedule of properties in the main suit. In the said suit, the sixth defendant has filed a written statement, wherein it is stated that the grandfather of the tenth petitioner viz., Veluthevar possessed



several properties and all the properties have not been added in the suit.

Therefore, the plaintiffs, to amend the pleadings in order to add the said properties as 14th item in the schedule, filed an application in I.A.No.8 of 2022.

3.The said application was resisted on the side of the respondents/defendants by way of filing counter, wherein it has been stated that the suit was filed on 17.04.2014 and the written statement was filed on 12.09.2014 and there was a delay in filing the amendment petition. Therefore, the said application is barred by limitation and the same is liable to be dismissed.

4.The trial Court, after considering the averments made in the petition and in the counter affidavit, dismissed the above application. Aggrieved by this, the present civil revision petition is filed.

5.The learned counsel appearing for the revision petitioners would submit that the amendment petitioner under Order IV Rule 17 of C.P.C., can be filed at any stage of the proceeding for the purpose of determining the real questions in controversy between the parties. Since the trial is not commenced in order to determine the shares of the parties, it is essential to include the omitted properties belonging to the plaintiffs' grandfather. The



trial Court failed to consider that if the amendment petition is allowed, the character of the suit will not be changed and hence, he prays for setting aside the order passed by the trial Court.

6. On the other hand, the learned counsel appearing for the fifth respondent submitted that if the said amendment is allowed, it would change the character of the suit and the same is also barred by limitation. Hence, there is no infirmity found in the order of the trial Court.

7. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the fifth respondent and also perused the materials available on record.

8. In **2008(5) CTC 545 (Patama and others. Munusamy and 20 others)** wherein, this Court, held as follows:

12. It is to be borne in mind that the power to allow an amendment should be liberally exercised, The aim in allowing an amendment is to avoid plurality of proceedings in the eye of law. As a matter of fact, an amendment which does not totally alter the character of an action ought to be granted as a matter of course. However, care should be taken to see that prejudice or an injustice are not inflicted upon the other party under the pretext of an amendment. As a general rule, the technicalities of law ought not to be permitted to hinder a court of law in the



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administration of justice between the parties. in the considered opinion of this Court. Generally speaking there any injustice in granting an amendment if the opposite party can be compensated in terms of costs Undoubtedly, it is the discretion of the court to allow an amendment application or not. It cannot gainsaid that the rules of procedure are intended for the administration of justice and a litigant should not be refused a fair, prudent and just relief merely because of some negligence, mistake or inadvertence or even infraction of the rules of procedure. However, the order of costs to be imposed must be quite reasonable and the same should not be by way of punishment."

9. Before parting with the above decisions, it is necessary to cite a paragraph from a case *Ma Slave Mya v Maung Mo Hraung* 21 "All rules of court are nothing but provisions intended to secure the proper administration of justice, and it is therefore essential that they should be made to serve and subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject-matter of the suit" (emphasis supplied) Keeping the above principle, the Court of Law has to dispense the justice.



10.From the materials on record, it is seen that the petitioners filed the suit for partition in the year 2014. The petitioners have given acceptance reason to include the petition mentioned properties in the suit. In a suit for partition, any property let out, can be included at any stage, either at the instance of plaintiff or defendant, to avoid multiplicity of proceedings whether the above properties are available for partition can be considered at the time of trail.

11.It is pertinent to note that the plaintiffs have filed the suit in the year 2014 and the trial is not yet commenced. Therefore, no prejudice would be caused to the defendants by allowing this application. Therefore, the order passed in I.A.No.8 of 2022 in O.S.No.136 of 2014 is hereby set aside and the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

29.09.2023

NCC:Yes/No
Index:Yes/No
Internet:Yes/No
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- To
- 1.The Additional Sub-Court,
Tirunelveli.
 - 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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K.GOVINDARAJAN THILAKAVADI, J.

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