



WEB COPY



CRP (MD) No.894 of 2023

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

|                      |            |
|----------------------|------------|
| <b>Reserved on</b>   | 08.08.2023 |
| <b>Pronounced on</b> | 07.09.2023 |

**CORAM:**

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

CRP (MD) No.894 of 2023

and

CMP(MD)No.4109 of 2023

Krishnaveni (died)

... Deceased plaintiff

Solairaj

... Petitioner

Vs.

1.Rajkumar

2.Pankajavalli

3.Santhanamari

4.Lakshmi

5.R.Subhashini

6.Vijayakumar

7.R.Anand Prabhu

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair order and executable order passed in I.A.No.62 of 2022 in O.S.No.24 of 2018 by the learned Additional District Judge, Virudhunagar, dated 10.02.2023.



WEB COPY



CRP (MD) No.894 of 2023

For Petitioner : Mr.M.Rajaraman

For R1 : Mr.Selva Aditya

For R2 to R7 : No appearance

### **ORDER**

This civil revision petition is preferred by the petitioner against the order passed in I.A.No.62 of 2022 in O.S.No.24 of 2018 on the file of the Additional District Munsif, Virudhunagar, dated 10.02.2023.

#### **Facts:-**

2.The above suit in O.S.No.24 of 2018 was filed by the plaintiff for partition of the property claiming 5/8<sup>th</sup> share in the suit properties and for rendition of account by the defendants 1 to 3 in respect of the income derived from the suit properties and to direct the defendants 1 to 3 to pay 5/8<sup>th</sup> share in the said income with interest at the rate of 12% per annum. During the pendency of the suit, the plaintiff died and the revision petitioner, the son of the deceased plaintiff, took out an application in I.A.No.41 of 2020 to transpose him as a plaintiff and the same was allowed. Thereafter, the petitioner/second plaintiff took out an application in I.A.No.62 of 2022 for



amending the plaint by impleading the respondents 5 to 7 in the suit and to include certain properties in the schedule of properties. The same was resisted on the side of the respondents on the following grounds that the suit was originally filed in the year 2010 and the first plaintiff died only in the year 2020. The above petition was filed belatedly and the same is not maintainable. The deceased plaintiff filed an application in I.A.No.82 of 2018 for impleading the respondents 5 to 7 as defendants. Thereafter, amendment petition was filed in I.A.No.45 of 2019 and the same was dismissed. Now, the petitioner by adding the respondents 5 to 7 in the suit trying to include large items of properties in the suit after 10 years of filing the suit. The trial Court, after considering the averments made in the petition and counter affidavit, partly allowed the said petition in respect of the persons sought to be impleaded as per the order in I.A.No.82 of 2018 and dismissing the said application in respect of the properties. Against which, the present civil revision petition is filed.

3. The learned counsel appearing for the revision petitioner would submit that since the suit is for partition, all the properties belonging to the



family have to be included in the suit. On the basis of the title, the petitioner is entitled to claim right in all the properties. He would further submit that the trial Court failed to note that the application in I.A.No.82 of 2018 was allowed only on the ground that some of the joint family properties are standing in the name of the proposed parties. Therefore, the order passed by the trial Court is against the principles of law and improper, warranting interference.

4. On the other hand, the learned counsel for the first respondent would submit that the petitioner has no right in the petition mentioned properties and therefore, the said properties cannot be included in the suit for partition. The trial Court has rightly dismissed the petition, which calls for no interference.

5. Heard on both sides and records perused.

6. In the order passed by the trial Court, it is stated that the proposed amendment in Schedule V Survey Numbers 69/9, 69/11, 71/1A, 71/2C, 70/2, 70/3 are sought to be included in the plaint. But, as rightly pointed out by the



learned counsel for the respondents, these properties were already included in the 1<sup>st</sup> item properties 9, 16, 19, 14 and 15 of plaint schedule III. Moreover, in schedule VI of the plaint, Pankajam Lorry Service and Pankajam Agency were also sought to be included. It is seen that item No.5 of schedule number III, those properties were included already. So, the above proposed amendment with respect to the above properties cannot be allowed and the properties cannot be included in the plaint for the second time.

7. In the impugned order, it is further stated that the petitioner, who was originally the first defendant in the suit, filed his written statement on 14.12.2010 itself, in which he had claimed 1/4th share in the suit properties. But, he had not stated that the properties mentioned in the petition were available for partition and the contention of partial partition was not raised in the written statement. Further, in the said order, the trial Court has observed that the petitioner has come forward with the above amendment after lapse of 10 years and therefore, the petitioner cannot be permitted to amend the plaint as a matter of right. It is further observed that if the petition mentioned properties which are in large numbers, are included in the suit by way of



CRP (MD) No.894 of 2023

amendment, it would change the nature of the suit and the dispute will be enlarged. Further the trial Court has permitted to amend the plaint by impleading the respondents 5 to 7, since the impleading petition in I.A.No.82 of 2018 was already allowed. In respect of including the petition mentioned properties, amendment petition was dismissed.

8. In a suit for partition, all the properties belonging to the family ought to be included to avoid multiplicity of proceedings and the question as to whether the said petition mentioned properties are available for partition, has to be decided only at the time of trial. Therefore, the order passed by the trial Court that by adding the petition mentioned properties would result in changing the nature of the suit, is incorrect. Accordingly, the order passed by the trial Court in I.A.No.62 of 2022 dismissing the amendment for including the properties, is set aside and the said petition is allowed in toto.

9. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

**07.09.2023**

NCC : Yes/No  
Index : Yes/No  
Internet : Yes



CRP (MD) No.894 of 2023

WEB COPY

To

The Additional District Judge,  
Virudhunagar.



WEB COPY



CRP (MD) No.894 of 2023

**K.GOVINDARAJAN THILAKAVADI**

cp

order made in  
CRP (MD) No.894 of 2023

07.09.2023

8 / 8