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C.R.P(PD)(MD).No.214 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.06.2023

Pronounced on : 22.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(PD)(MD).No.214 of 2019

and

C.M.P(MD)No.1025 of 2019

- 1.V.Amalorpava Mary
- 2.Lourdhu Mary
- 3.Selvam
- 4.Arockiaraj

... Revision Petitioners/
Plaintiffs

Vs.

- 1.S.Antonysamy
- 2.S.Anthony Ammal
- 3.Sebastiammal
- 4.Basca Mary
- 5.Maria Mechalammal
- 6.S.Arockiasamy
- 7.C.Sevathiammal
- 8.Pracis Xavier
- 9.S.Edison
- 10.Sengol
- 11.A.Anthony Samy
- 12.Micheal Raj
- 13.Sebastiar
- 14.Savarimuthu
- 15.P.Murugan
- 16.P.Karupaiah

... Respondents/Defendants



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PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 10.09.2018 passed in I.A.No.278 of 2018 in O.S.No.23 of 2011 on the file of the Principal Sub Judge, Pudukottai.

For Petitioners : Mr.R.Balakrishnan

For Respondents : Mr.M.Ramu

ORDER

This Civil Revision Petition is filed against the fair order and decreetal order dated 10.09.2018 passed in I.A.No.278 of 2018 in O.S.No.23 of 2011 on the file of the Principal Subordinate Court, Pudukottai.

2. The brief facts of the case:

The revision petitioners are the petitioners in I.A.No.278 of 2018 in O.S.No.23 of 2011 on the file of the Principal Subordinate Court, Pudukottai. The petitioners have filed the main suit for partition against the respondents. The respondents have filed their written statement and the suit is pending for trial. During pendency of the suit, the petitioners have filed the petition to amend their share in the suit instead of earlier claimed in the suit. The respondents resisted the petition by filing counter. After hearing both, the Trial Court has dismissed the petition on



10.09.2018. Aggrieved by the order of the Trial Court, the petitioners moved this Court by way of this Civil Revision Petition.

3. Heard both sides and perused the records in this Civil Revision Petition.

4. The learned counsel appearing for the revision petitioners has submitted that the properties originally belonged to Gnanamuthu Udaiyar and Arockiammal. They had only four daughters namely Maria Micheal, Anthonyammal, Amalorpava Mary and Kulandai Therasu. Out of them, Kulandai Therasu, who was unmarried, died without leaving any heir. The other sisters had 1/3rd share in the suit properties. Maria Micheal got married with one Yagappan and after marriage she died in the year 1963 leaving her husband as legal heir. Then the 1st petitioner was given marriage with the said Yagappan and out of their wedlock the petitioners 2 to 4 were born. Yagappan died leaving the petitioners as his legal heirs. Yagappan was originally entitled 1/3rd share through his 1st wife Maria Micheal. The 1st plaintiff is entitled to 1/3rd share and also the petitioners are entitled share from 1/3rd share of Kulandai Therasu. While calculating the apportionment of shares in the suit properties, the



petitioners inadvertently made 4/8th of shares in the plaint as well as in the relief. Therefore, the petitioners filed the petition in I.A.No.278 of 2018 in O.S.No.23 of 2011 even before commencement of trial. The Trial Court without considering the facts dismissed the petition by erred in holding that the amendment sought introduced a new pleading. The petitioners have not introduced any new pleading and only they want to amend relating to allocation of shares, which is permissible in law. Hence, the order of the Trial Court has to be set aside and amendment may be allowed. In support of his arguments, the learned counsel for the petitioners has relied on the decision of this Court in the case of **Deivendran Vs. Subbiah Nadar and Ors.** reported in **2006(1) CTC 721.**

5. Per contra, the learned counsel for the respondents contended that the petitioners suppressed several facts and filed the suit for partition. Among sisters, the said Kulandai Therasu got married and because of misunderstanding in the matrimonial home she left and was living with the 1st respondent. She orally offers the 1st respondent to take her share after her demise. The amendment sought by the petitioners would change the character of the suit. As per Section 35 of the Indian Succession Act, the portion of shares claimed by the petitioners is not



correct. The Trial Court has correctly dismissed the petition and therefore, this Civil Revision Petition may be dismissed.

6. On hearing both and on perusal of order of the Trial Court, it is clear that there is no dispute that the properties originally belonged to Gnanamuthu Udaiyar and Arockiammal and they had only four daughters namely Maria Micheal, Anthonyammal, Amalorpava Mary and Kulandai Therasu and that the father of the petitioners 2 to 4 namely Yagappan married two sisters Maria Micheal and Amalorpava Mary. Further there is no dispute that Kulandai Therasu was not married and that Maria Micheal, Yagappan and Kulandai Therasu died. Now, the parties to the suit are two branch of sisters namely Anthonyammal and Amalorpava Mary. While the facts being so, the petitioners state that at the time of filing of the suit they inadvertently averred the portion of share and want to alter the share portion in the plaint and relief. Admittedly, so far the trial is not commenced in the main suit. Regarding amendment relating allocation of share is permissible, as rightly argued by the learned counsel for the petitioner relied on decision of this court reported in **2006(1) CTC 721**. Further, the Hon'ble Supreme Court in its verdict reported in **(2022) 0 AIR (SC) 4256** in “**Life Insurance Corporation of India /v/ Sanjeev Builders Private Limited and anr.**” has clearly laid



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down guidelines in respect of considering the amendment petition which is filed pending suit. In view of the guidelines laid down by the Hon'ble Apex Court and the earlier decision this court as stated supra and in the above facts and circumstances the impugned order of the Trial Court is not correct and the same is liable to be interfered by way of this Civil Revision Petition.

7. In the result, this Civil Revision Petition is allowed. The order of the Trial Court passed in I.A.No.278 of 2018 in O.S.No.23 of 2011 dated 10.09.2018 on the file of the Principal Subordinate Court, Pudukottai is set aside and the said petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

22.06.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

vsd

To

1.The Principal Subordinate Judge,
Pudukottai.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

vsd

Pre - Delivery Order made in
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