



C.R.P.(MD).No.1319 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD)No.1319 of 2019

and

C.M.P(MD) No.7164 of 2019

1. Arulayee (died)
2. Kulandaisamy
3. Arulandu ... Petitioners/Respondents/Defendants
(P1 – died amended vide order of this
Court dated 09.08.2023 made in C.M.P(MD)
No.8293 of 2019 in C.R.P(MD) No.1319 of 2019)

-vs-

Santhayee ... Respondent/ Petitioner/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No. 369 of 2018 in O.S.No.50 of 2014, dated 21.02.2019 on the file of the District Munsif cum Judicial Magistrate Court, Thiruvadanai.

For Petitioners : Mr.H.Thayumanaswamy
For Respondent : Mr.PT.S.Narendravasan



C.R.P.(MD).No.1319 of 2019

ORDER

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The present Civil Revision Petition has been filed by the petitioners under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No.369 of 2018 in O.S.No.50 of 2014, dated 21.02.2019 on the file of the District Munsif cum Judicial Magistrate Court, Thiruvadanai.

2. The petitioners herein are the defendants and the respondent herein is the plaintiff before the Court below.

3. For the sake of convenience, the parties will be referred to as per the litigative status before the trial Court.

4. The learned counsel appearing for the petitioners would submit that the order passed by the Court below permitting the amendment so as to include the house property situated in S.F.No.41/7 is contrary to law.

5. It is the submission of the learned counsel for the petitioners that the house property absolutely belongs to them, and that they have put up a



C.R.P.(MD).No.1319 of 2019

construction to an extent of 1,500 square feet by spending more than a sum of Rs.30,00,000/- (Rupees Thirty Lakhs only). It is also the submission of the learned counsel for the petitioners that the house which exists in S.F.No.41/7 is a terraced house, however the amendment sought for is in respect of tiled house. Therefore, would contend that there is no point in allowing the amendment in respect of the house, which absolutely belongs to the petitioners.

6. However, the learned counsel appearing for the respondent would strongly object the said contention, and would submit that if the property is not included, then the suit will be hit by the principle of partial partition, on the other hand the petitioners can very well put forth their defence by way of filing an additional written statement and also entitled to let in evidence to disprove the contention of the respondent. Hence, prayed to dismiss the petition.

7. This Court has given anxious consideration to the submissions of the learned counsel on either side.



C.R.P.(MD).No.1319 of 2019

WEB COPY

8. A perusal of the records shows that the very amendment is sought for after the commencement of trial. However, while perusing the petition, it is the submission of the respondent/plaintiff that the property situated in S.F.No.41/7 was inadvertently left out. Though the amendment application has been filed after commencement of the trial, the same appears to have been filed within a reasonable time. Further as rightly submitted by the learned counsel for the respondent, the petitioners/defendants herein are having opportunity to put forth their contention by way of filing an additional written statement and also by letting in evidence. Therefore, the learned counsel for the respondent would submit that the mere amendment will in no way prejudice the rights of the petitioners herein.

9. The very submissions of the learned counsel for the respondent liable to be accepted. On perusal of the orders of the Court below, the Court below has also rightly recorded the above reasons to allow the application. Besides the Court below also recorded that if the schedule property is not allowed to be included in the plaint then there is a possibility of a probable defence in respect of the partial partition. Therefore, this Court could not find any merits



C.R.P.(MD).No.1319 of 2019

to interfere with the order of the Court below. However, liberty given to the petitioners to put forth their defence by way of an additional written statement before the Court below.

10. In the result, this Civil Revision Petition is **dismissed**. Considering the age of the parties and also considering the pendency of the matter since 2014, this Court deems it appropriate to give a direction to the Court below to dispose of the suit in O.S.No.50 of 2014 as expeditiously as possible, preferably within a period of six months from the date of receipt of the copy of this order. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

04.09.2023

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

1. The District Munsif cum Judicial Magistrate Court,
Thiruvadanai.



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C.R.P.(MD).No.1319 of 2019

C.KUMARAPPAN,J.

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C.R.P(MD)No.1319 of 2019

04.09.2023