



C.R.P.(MD)No.1558 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD)No.1558 of 2019

and

C.M.P.(MD)No.8267 of 2019

Palaniyappan

... Petitioner/
Petitioner/
Defendant

Vs.

R.Kaliappan

... Respondent/
Respondent/
Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records and set aside the fair and decreetal order dated 09.07.2019 in I.A.No.519 of 2018 in O.S.No.65 of 2013 on the file of the Sub Court, Vedasandur and allow this civil revision petition with costs.

For Petitioner : Mr.H.Lakshmi Shankar

For Respondent : Mr.M.Saravanan

ORDER

The instant Civil Revision Petition has been filed by the petitioner under Article 227 of the Constitution of India, against the order dated



C.R.P.(MD)No.1558 of 2019

09.07.2019, made in I.A.No.519 of 2018, in O.S.No.65 of 2013, on the file of the Sub Court, Veda sandur.

2. The learned counsel appearing for the revision petitioner / petitioner / defendant (hereinafter called as defendant) would submit that in a partition suit, both the defendant and the respondent / respondent / plaintiff (hereinafter called as plaintiff) can be considered as *dominus litis*, and that when the plaintiff has not included the joint family property, then the defendant has every right to move an amendment application and to include the property left out by the plaintiff. However, the Court below, without considering the said aspect, has dismissed the application and hence, he prayed to interfere with the same.

3. The learned counsel appearing for the defendant has relied on the judgment of the Hon'ble Division Bench of this Court reported in ***2012 (1) CTC 159 (Solavaiammal and others Vs. Ezhumalai Goundar and another)***.

4. Per contra, the learned counsel appearing for the plaintiff would submit that the plaintiff has filed a suit only in respect of item Nos.1 to 3 of the properties. In which, item No.1 of the suit properties was jointly purchased by the plaintiff and the defendant. Similarly, Item Nos.2 and 3



C.R.P.(MD)No.1558 of 2019

of the suit properties originally belonged to the mother of the plaintiff and the defendant. Thereafter, the plaintiff and the defendant became the joint owner of the properties by virtue of the settlement deed executed by the mother gifting undivided half share over the Item Nos.2 and 3 of the suit properties. Therefore, it is the submission of the learned counsel appearing for the plaintiff that the suit for partition has not been filed against the joint family property or Hindu undivided family property, but has been filed in respect of the property derived from two settlement deeds and also the property only in respect of the joint purchase between the plaintiff and the defendant. Therefore, the question of *dominus litis* in respect of the partition suit is not applicable in this matter.

5. It is also the submission of the learned counsel appearing for the plaintiff that the property sought to be included by the defendant is absolute property of the plaintiff and was purchased during the year 1974 and therefore, the very amendment is devoid of merit. It is also the submission of the learned counsel appearing for the plaintiff that the amendment application has been filed only after the commencement of trial and therefore, the dismissal order of the amendment application passed by the Court below is justifiable and there is no necessity to interfere with the same.



C.R.P.(MD)No.1558 of 2019

6. I have given my anxious consideration to the either side submissions.

7. From the reading of the plaint averments, as rightly submitted by the learned counsel appearing for the plaintiff, the suit property was jointly purchased by the plaintiff and the defendant, and the property has been gifted by their mother with undivided half share over Item Nos.2 and 3 of the suit properties. Therefore, this Court is of the view that the partition suit should not be construed as a partition in respect of the joint family property or partition in respect of the Hindu undivided family property.

8. However, the learned counsel appearing for the defendant would invite the attention of this Court in respect of the finding of the Court below and would contend that the suit property has been purchased about 45 years back and admittedly, the same stands in the name of the plaintiff.

9. At this juncture, the learned counsel appearing for the defendant would invite the attention of this Court in respect of the ruling reported in **2012 (1) CTC 159 (Solavaiammal and others Vs. Ezhumalai**



Goundar and another), wherein, the Hon'ble Division Bench of this Court has held that in a partition suit, the plaintiff and the defendant can be considered as *dominant litus* and the defendant can file an amendment application to include any other left out property. This Court deems it appropriate to extract the relevant portion of the judgment as follows:

“19. However, in an application for amendment, the Court has to prima facie satisfy itself as to whether the properties are available for partition or not, as a detailed adjudication on the claim is improper. If there is a dispute over the inclusion of properties by the plaintiff contending that those properties are not available for partition, the Court is certainly entitled to reject the application for amendment on that ground. In such event, the only course open to the defendant is to file a suit for partition by including those properties. As we have been called upon to answer the question as to whether the application under Order VI, Rule 17 of the Civil Procedure Code seeking for amendment of the schedule to the plaint in a partition suit at the instance of the defendant is maintainable or not, we answer the said issue by holding that while considering such an application, it is for the Court to decide on the facts of each case. The reference is answered accordingly.”



C.R.P.(MD)No.1558 of 2019

10. As per the above ratio, though the defendant is a *dominus litis*, the Hon'ble Division Bench has held that if there is a dispute over the inclusion of properties by the plaintiff contending that those properties are not available for partition, while deciding the amendment application, depending on the circumstances of the case, the Court is entitled to reject the same.

11. In this case, while considering the finding of the Court below, the Court below has dismissed the amendment application on the ground that the suit property was purchased about 45 years back and the suit property stands in the name of the plaintiff.

12. It is pertinent to mention here that as submitted by the learned counsel appearing for the plaintiff, the suit for partition is in respect of 3 properties which as on date jointly stand in the name of the plaintiff and the defendant. This Court is of the view that the finding of the Court below does not require any interference and the same is well considered one.

13. Apart from the above ground, admittedly, the amendment application has been filed only during the part-heard stage and while



C.R.P.(MD)No.1558 of 2019

reading the affidavit, this Court could not find any due diligence for not filing the amendment application well in advance.

14. It is pertinent to mention here that though the defendant knew about the so-called properties which are mentioned in the petition, the delay on the part of the defendant in not filing the amendment application would also disentitle him to get order in his favour. Therefore, this Court is of the firm view that the order passed by the Court below in dismissing the amendment application is not liable to be interfered with.

15. In the result, this Civil Revision Petition stands **dismissed**. There shall be no order as to cost. Consequently, connected Miscellaneous Petition is closed.

20.09.2023

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

To
1.The Sub Court,
Vedasandur.
2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P.(MD)No.1558 of 2019

C.KUMARAPPAN, J.

csn

ORDER MADE IN

C.R.P.(MD)No.1558 of 2019

and

C.M.P.(MD)No.8267 of 2019

Dated : 20.09.2023