



C.R.P(MD)No.1354 of 2014

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

DATED: 17.04.2023

CORAM

THE HON'BLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P(MD)No.1354 of 2014

and

M.P(MD)No.1 of 2014

1.Parthiban

2.Karthigeyarn

3.Rajalakshmi

... Petitioners

Vs.

1.M.Sekar

2.S.Govindarajan

... Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed by the District Munsif Court, Sivagangai in I.A.No.126 of 2014 in O.S.No. 78 of 2012 dated 10.03.2014.

For Petitioners : Mr.N.Tamilmani

For Respondents : No appearance



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ORDER

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This Civil Revision Petition has been filed as against the order passed by the learned District Munsif Court, Sivagangai in I.A.No.126 of 2014 in O.S.No.78 of 2012 under Order VI, Rule 17 of the Code of Civil Procedure, 1908, to amend the prayer column of the plaint. The suit was one for declaration and permanent injunction to declare that the sale deed bearing document No.1047/Madhagupatti, Sub Registry dated 04.10.2001 executed by the first respondent in favour of the second respondent as null and void and further restrain the second respondent from creating any kind of encumbrance over the plaint schedule property. For the sake of convenience, the parties herein are arrayed as in the I.A.No.126 of 2014.

2. All the petitioners / plaintiffs are the children of the first respondent / defendant and the second respondent / second defendant is the close friend of the first respondent / first defendant. The first respondent / first defendant was not living with the petitioners / plaintiffs and the relationship between the first respondent / first defendant and the



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mother of the petitioners / plaintiffs were estranged and they were not in talking terms. While so, the learned Counsel for the petitioner submitted that without the knowledge of the petitioners / plaintiffs, the first respondent / first defendant had executed the aforesaid Sale Deed, which is one of their ancestral properties.

3. The first respondent / first defendant has admitted the same in his written statement by way of admission made by the first defendant and the second defendant in their written statement. It became necessary for the petitioners / plaintiffs to file their amendment petition seeking to amend the prayer column of the plaint for the relief of partition alone. The learned Counsel for the petitioners / plaintiffs further submitted that they have not sought for any other amendment either in the content of the plaint or in the plaint schedule property. So that this amendment sought will not change the nature of the suit.

4. The first respondent / first defendant did not file any counter in the said amendment petition. However, the second respondent / second



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defendant had filed counter, wherein he submitted that the first respondent / first defendant has colluded with the petitioners / plaintiffs and they have together filed this case by bringing in his father as the first respondent / first defendant. The learned Trial Court however dismissed the I.A. for the following reasons:

“After the trial has begun and the suit was posted for plaintiffs' side evidence, the petitioners have filed this petition for the amendment of the plaint. Already P.W.1 specifically admitted that the suit property is in the possession and enjoyment of the second defendant. Further the P.W.1 had admitted that apart from the suit property, several other properties belonging to his grand-father Muthanan are also situated in their village and adjoining villages. Considering the above vital admissions specifically made by the first petitioner / first plaintiff, the Trial Court concluded that the petition for amendment is not maintainable.”

5. When the case is called up for hearing today, there is no representation for the first respondent and the name of the second



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respondent is printed in the cause list. This case was posted today under the caption 'For Orders' for the arguments of the respondents' side . Even today, the learned Counsel for the respondents did not turn up.

6. Heard the learned Counsel for the revision petitioner anxiously and perused the materials available on record. The learned Counsel for the revision petitioner took me through the various grounds of the Civil Revision Petition and the contents of the documents.

7. I am fully satisfied with the arguments substantiated by the learned Counsel for the petitioner.

8. This Court is of the considered view that though admissions are made by P.W.1, that is, the first petitioner / first plaintiff herein in the cross-examination about the existence of other family properties, it is all a matter to be decided in the suit after the completion of the trial in entirety and the amendment of plaint can be made at any point of time without prejudice to the case pending, relying upon the judgments of this



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Court in *S.Kanthimathiammal and Others Vs. Nagammal and Others reported in 2015 (4) CTC 666* dated 31.03.2015 and *Thiru Alankadu Immudi Ahora Dharma Sivachariar Aiyra Vaisya Madam Vs. Udumalpet Samayapuram Ayira Vaisya Sangam, Represented by its President reported in 2005 (4) CTC 664* dated 22.07.2005.

9. Hence, this Court is of the considered view that since the amendment sought for is only with respect to the prayer seeking an additional prayer of partition, without altering the nature of the case, it is necessary that the order passed in I.A.No.126 of 2014 on the file of the District Munsif Court, Sivaganga has to be set aside. In the result, this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

17.04.2023

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

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- 1.The District Munsif Court,
Sivagangai.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

BTR

Order made in
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