



CRP (MD) No.2022 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	31.07.2023
Pronounced on	17.11.2023

CORAM:

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

CRP (MD) No.2022 of 2022
and
CMP (MD).No.9243 of 2022

1.Selvam
2.Karuppiyammal
3.Rajeshwari
4.Gomathinayagi

... Petitioners/defendants 1,3 to 5

Vs.

Raj

... Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India seeking to set aside the order fair and decreetal order passed in I.A.No.8 of 2021 in O.S.No.177 of 2016 dated 29.03.2022 on the file of the learned Principal Subordinate Judge, Tirunelveli

For Petitioners : Mr.M.P.Senthil

For Respondent : Mr.K.Esaki



ORDER

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This civil revision petition has been preferred as against the order passed in I.A.No.8 of 2021 in O.S.No.177 of 2016 dated 29.03.2022 on the file of the Principal Subordinate Judge, Tirunelveli.

2.The defendants 1, 3 to 5 in O.S.No.177 of 2016 filed an application in I.A.No.8 of 2021 to include certain properties in the suit schedule. The said application was dismissed by the trial Court. Aggrieved by this, the present revision is preferred.

3.According to the revision petitioners, by virtue of sale deed dated 10.07.1985, they are entitled to 1/5th share in the suit properties. However, the respondent/plaintiff failed to include the above properties in the present suit for partition. Therefore, it has become necessary to include the said properties in the suit to avoid further litigations. However, the trial Court dismissed the said application by stating that the plaintiff is the dominus litis and therefore, the plaintiff cannot be compelled to include other item of properties in the partition suit.



4.The learned Counsel appearing for the revision petitioners

would submit that the merits of amendment cannot be adjudicated at the stage of allowing the prayer for amendment when the proposed amendment does not introduce a new case and only elaborate circumstances which has to be established by sufficient evidence. Pre-trial can be liberally viewed. He would further contend that in a suit for partition, any property left out can be included at any stage either at the instances of the plaintiff or the defendant. In order to avoid multiplicity of the proceedings, the Trial Court ought to have allowed the application filed by the petitioners/first, third to fifth defendants.

5.In support of his contention, the learned counsel for the revision petitioners has relied upon a decision of this Court (Principal Seat of this Court) in the case of **Solavaiammal and others Vs. Ezhumalai Gounder and another**, reported in *2012 (1) CTC 159*.

6. On the other hand, the learned counsel appearing for the respondent/plaintiff would submit that the revision petitioners/ defendants 1, 3 to 5 cannot compel the respondent/plaintiff to include the additional



properties in his suit for partition. It is submitted that the petition mentioned property belonged to the father of the plaintiff and the defendants who has settled the same in favour of the respondent/plaintiff and they cannot claim any share in the above properties. The proposed properties are the absolute properties of the respondent/plaintiff and the same need not be included in the above suit. It is therefore submitted that the Trial Court has rightly dismissed the application in I.A.No.8 of 2021 which calls for no interference.

7. Heard both sides. Records perused.

8. It is well settled law that in a suit for partition, any property left out can be included at any stage either at the instance of the plaintiff or the defendant. Whether the said properties are absolute properties of the respondent/plaintiff or it is available for partition can be decided only at the time of trial. Therefore, no prejudice would be caused to the respondent/plaintiff by allowing the said application. The Trial Court ought to have allowed the said application to have a fair adjudication. The Trial Court failed to consider the facts in a proper perspective and dismissed the application. Thus, the impugned order dated 29.03.2022 passed in I.A.No.8



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of 2021 in O.S.No.177 of 2016 is liable to be set aside and it is hereby set aside.

9. The petitioners/first, third to fifth defendants are directed to carry out the amendments within a period of 2 weeks from the date of receipt of a copy of this order.

10. In the result, the Civil Revision Petition is allowed, the order passed in I.A.No.8 of 2021 in O.S.No.177 of 2016 dated 29.03.2022 by the learned Principal Subordinate Judge, Tirunelveli is set aside. No costs. Consequently, connected miscellaneous petition is closed.

17.11.2023

Jen/vsn

To

The Principal Subordinate Judge, Tirunelveli,



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K.GOVINDARAJAN THILAKAVADI.J,

Jen/vsn

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