



C.R.P(MD)No.2058 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.11.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **P.B.BALAJI**

C.R.P(MD)No.2058 of 2017

and

C.M.P(MD)No.10230 of 2017

A.Arunachala Mankondar

: Petitioner

.VS.

1.Santhi Muthusamy

2.M.Ramalingam

3.R. Viswanathan

4.Padmavathi

: Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 10.10.2017 made in I.A.No.93 of 2016 in O.S.No.2 of 2012 on the file of the III Additional District Judge, Thanjavur @ Pattukottai and allow this Civil Revision Petition.

For Petitioner

:Mr.Raguvaran Gopalan

For Respondents

:No Appearance



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ORDER

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The revision is filed at the instance of the second defendant, who had taken out an application to amend the plaint in a partition suit on the premise that certain properties, which were available for partition, had been left out.

2.It is the specific case of the Revision Petitioner that despite the same being brought to the notice of the plaintiffs, by way of written statement, the plaintiffs did not choose to file any reply statement and therefore, the Revision Petitioner was driven to the necessity of filing necessary amendment application to include the properties, which were left out in the plaint. The trial Court, however, has dismissed the said application, as against which, the present Revision Petition has been preferred.

3.Mr.Raguvaran Gopalan, learned Counsel for the Revision Petitioner would submit that no prejudice would be caused to the respondents/plaintiffs, if the properties are included, as it would only avoid multiplicity of proceedings and shorten the litigation for all the



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parties. More over, he would also state that being a partition suit, the defendants are also the plaintiffs for all practical purposes and therefore, the application ought to have been allowed.

4.He would also place reliance on the Division Bench judgment of this Court reported in **2012 (1) CTC 159 [Solavaiammal and others vs.Ezhumalai Gounder and another]**, where, this Court has held that an application for amendment in a suit for partition is maintainable even at the instance of one of the defendants, as the principle of *dominus litus* is a general rule in respect of civil suit and the same cannot be extended to a suit for partition.

5.Having heard the learned Counsel for the Revision Petitioner and also perused the records, I am of the opinion that though the defendants, who can also be treated as plaintiffs, are entitled to seek inclusion of the left out properties, the proper procedure would be to raise the same by way of a counter claim. If the defendants' application for amendment is allowed and subsequently, the plaintiffs do not choose to carry out amendment, then the suit will have to be dismissed for not carrying out the amendment ordered. The defendants are not entitled to carry out the



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amendments to the plaint, even if the amendment application was ordered at their instance. To avoid such an anomalous situation, the better course to adopt would be to permit the Revision Petitioner to file an amendment application to his written statement or file an independent counter claim, as he may deem fit and proper and the Trial Court shall entertain the same and the question of limitation of filing the amendment petition seeking to amend the written statement and filing of the additional written statement post trial shall not be put against the Revision Petitioner. The Civil Revision Petition is dismissed, reserving such liberty and the order of the trial Court is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

02.11.2023

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

cmr

To

The III Additional District Judge, Thanjavur @ Pattukottai.



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P.B.BALAJI, J.

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