



C.R.P.(MD)No.3279 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.12.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(PD)(MD)No.3279 of 2023

and

C.M.P.(MD)No.17096 of 2023

1.Aadhammal

Santha (Died)

2.Thiyagarajan

3.Suganya

4.Aadhammal

5.Raghu

: Petitioners/Petitioners/
Defendants

Vs.

Samikannu (died)

1. Pappa

2.Ramya

3.Minor.Pooventheran

4.Minor.Kalaiyaran

: Respondents/Respondents/
Plaintiffs



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Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order, dated 18.08.2023 made in I.A.No.3 of 2023 in O.S.No.157 of 2017 on the file of the Subordinate Court, Sivagangai.

For Petitioners : Mr.A.R.Kannappan

For Respondents : Mr.K.Chengizkhan,
Caveator/R1

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.3 of 2023 in O.S.No.157 of 2017, dated 18.08.2023 on the file of the Subordinate Court, Sivagangai, dismissing the petition filed under Order 6 Rule 17 C.P.C.

2. The respondents as plaintiffs have filed the above suit claiming partition in respect of 'A' and 'C' schedule properties and to declare that 'B' schedule properties are belonging to them and for consequential permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property.



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3. When the case was pending for defendants side evidence, the above application came to be filed seeking orders to amend the plaint for inclusion of three items of properties situated in S.No.16/2, 16/4 and 17/2 of Nalukottai Village, Sivagangai.

4. The learned counsel for the petitioners would submit that the properties sought to be included are the joint family properties as the same were purchased from the joint family income and that since the suit properties were omitted, the above petition came to be filed for inclusion of the same in the plaint.

5. The learned counsel for the respondents would submit that the properties sought to be included are the separate and self acquired properties and hence, they were not included in the present suit.

6. No doubt, at the instance of the defendants, in a suit for partition, the properties left out can be included in the plaint. But at the same time, if there is a dispute for the inclusion of the properties by the plaintiffs



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contending that those properties are not available for partition, the said properties cannot be added.

7. At this juncture, it is necessary to refer the judgment of another Hon'ble Division Bench of this Court in ***O.M.Subramanian and others VS. N.Palani (O.S.A.No.46 of 2017, dated 08.08.2017)***, wherein it has been held as follows:

“7. Having heard the learned counsel for the parties and perused record as also the judgement of the Division Bench, we are of the view that, if, there is a contestation with regard to whether or not a particular property is partible, then, even in a partition suit, amendment cannot be ordered at the behest of the opposite party. The rationale of the Division Bench in coming to the conclusion, which it did, stems from the logic that in a partition suit, there is strictly no plaintiff or defendant.”

8. When an order permitting the amendment of the plaint for inclusion of a property at the instance of the defendant, was challenged before this Court in ***Thomai Vs. Jeyaraj and Others*** reported in **2021(3) MWN 440**, this Court, relying on the decision of the Division Bench of this Court passed in a reference in ***Solavaiammal Vs. Elumalai Gounder***



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reported in **2012(1) CTC 159**, has specifically held that in a suit for partition, application for amendments at the instance of either party to the suit is maintainable under Order 6 Rule 7 CPC and it is necessary to refer the relevant paragraphs hereunder;

11.Considering the above, it is very much clear that a party cannot be permitted to amend the pleadings of the opposite party in all categories of suit, except in partition suit. Even in partition suit, if the nature of the property is disputed, then also amendment to include the properties at the instance of the defendant cannot be permitted. To put it in other way, if there is a contestation with regard to whether or not a particular property is partible, then even in a partition suit, amendment cannot be permitted at the bequest of the opposite party.

12.The Honourable Division Bench has further observed that the only course open to the defendant is to file the separate suit for partition by including those properties. In addition to the above, one other course is also available and the defendant can very well file his written statement cum counter claim with respect to those properties, but at the same time, subject to the conditions contemplated under Order 8 Rule 6 (A) CPC.

13.In the present case, as already pointed out, the first and third defendant have taken a specific stand that the



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property sought to be included is the joint family property and whereas according to the plaintiff and the second defendant, it is the separate and self acquired property of the second defendant. No doubt, the second defendant in an attempt to prove that it is the separate property, has produced the documents under Ex.R.1 to Ex.R19.

14.The learned trial Judge, by observing that whether the property sought to be included is the joint family property or the separate property of the second defendant can only be gone into and decided at the trial, allowed the amendments.

15.Considering the settled position of law, above referred, allowing the amendment so as to include some properties at the instance of the defendant, is legally impermissible.”

9. As already pointed out, in the case on hand, the plaintiffs have disputed the nature of the properties and taken a stand that the properties are not liable for partition.

10. Considering the above, the impugned order, dismissing the petition cannot be found fault with. Hence, this Court concludes that the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.



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11. In the result, the Civil Revision Petition is dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

20.12.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
das

To

- 1.The Subordinate Judge, Sivagangai.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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K.MURALI SHANKAR,J.

das

Order made in
C.R.P.(PD)(MD)No.3279 of 2023
and
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Dated : 20.12.2023