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CRP.No.318 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

CRP.No.318 of 2022
CMP.No.1637 of 2022

Dhanasekar

Petitioner

Vs

Perumal

Respondent

Prayer:- This Civil Revision Petition has been filed, under Section 227 of the Constitution of India, against the fair and decreetal order dated, 10.11.2021 passed in IA.No.Nil of 2020, in AS.No.9 of 2017, by the Principal Subordinate Court, Tindivanam.

For Petitioner : Ms.Jayalakshmi Paul

For Respondent : Mr.V.Babu

ORDER

1. This Civil Revision Petition has been filed against the fair and decreetal order dated, 10.11.2021 passed in IA.No.Nil of 2020, in AS.No.9 of 2017 by the Principal Subordinate Court, Tindivanam.
2. The Plaintiff in OS.No.222 of 2010 on the file of the Principal District Munsif, Tindivanam is the Appellant in the above said first appeal and the Petitioner herein. The Respondent herein is the Defendant in the said suit and the Respondent in the first appeal.
3. The facts leading to filing of this Civil Revision Petition are that the above suit



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was filed for declaration of title and for permanent injunction. The case of the Plaintiff is that the property originally belonged to one Jayalakshmi Ammal and her husband Arunachala Padayachi, by virtue of a registered partition deed dated 09.10.1974. Their elder son, Nagamuthu attempted, to alienate the property, which constrained Jayalakshmi Ammal to file a suit in OS.No.51 of 1998 on the file of the District Munsif, Tindivanam, seeking for declaration and permanent injunction and the said suit was decreed in part, holding that the attempt of Nagamuthu to alienate the joint family property, in which he is the co-owner, is illegal, and it was left open to the parties to file a suit for partition. In the mean time, Arunachala Padayachi passed away. Therefore, his legal heirs succeeded to the estate. Jayalakshmi Ammal had alienated the property in favour of one Govindasamy Gounder, who in turn sold the property to the present Plaintiff, who is the Petitioner herein. The Petitioner, claiming that he is the absolute owner of the property, filed the present suit seeking declaration and permanent injunction. By a detailed judgement and decree, dated 02.02.2017, the suit was dismissed. Aggrieved by the same, an appeal in AS.No.9 of 2017 on the file of the Principal Subordinate Court, Tindivanam was filed. Pending the appeal, the present unnumbered application was filed for amendment of the plaint and the said application came to be dismissed by the impugned order. Hence, this Civil Revision Petition has been filed.

4. This Court heard the learned counsel on either side, considered their submissions and also perused the materials placed on record.



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5. Before going into the merits of the case, it is pertinent to point out that in similar circumstances, this Court, in one of its decisions rendered in **Selvaraj V. Koodankulam Nuclear Power Plant India Limited (2021 5 Mad DB 467**, has held that the Court does not have jurisdiction to reject the application at the numbering stage and that the proper procedure as directed by this Court is that the court below, dealing with the case, should first issue notice to the Respondents, receive a counter from the said party and thereafter, pass orders on merits. This Court had frowned upon the practice of the District Judiciary in rejecting the application even without numbering it. In the case on hand, the impugned order was passed at the stage of numbering the application. This is the first infirmity this Court finds in the impugned order. The second infirmity is that the court below has held that there was a delay in filing the amendment application and therefore, it has to be dismissed.
6. In so far as the cause of action for a suit for partition is concerned, it arises de die in diem. In other words, the cause of action continuously accrues unless and until the question of ouster or otherwise is pleaded by the Defendant. Even with respect to ouster, it is a matter for evidence. At the stage of amendment application, the Court does not look for evidence, but only looks into the following circumstances, namely (1) whether there is any change of circumstances for cause of action, (2) whether the character of suit as framed is changed and (3) whether the suit is barred by limitation. If none of such circumstances arises, then the Court should normally allow the application for amendment. This is because the Court has to resolve the



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dispute, which is presented before it and not to push the parties for yet another expensive and prolonged litigation.

7. In the case on hand, the relationship between the Jayalakshmi Ammal, Arunachala Padayachi and Nagamuthu is not in dispute. The Defendant/ Respondent herein, namely, Perumal had purchased the property from Nagamuthu, son of Jayalakshmi Ammal and Arunachala Padayachi. The Plaintiff/ Petitioner herein, namely, Dhanasekar had purchased it from Jayalakshmi Ammal, when there was no partition between Jayalakshmi Ammal and her husband Arunachala Padayachi. Therefore, the Trial Court was right in coming to the conclusion that a suit for declaration is not maintainable. Yet, it could have granted the lesser relief of partition than the higher relief of declaration that was sought for.
8. Be that as it may. The amendment only seeks for the relief of partition. The subject relief was not granted by the court below on the ground of delay. As already pointed out, even without an amendment application in a suit for declaration of title, the Court is entitled to grant the relief of partition. However, for the sake of completion of pleadings, such an application has been taken, which was unfortunately dismissed by the court below, by the impugned order. It is true that there was unexplained delay in moving the application. Even at the stage of written statement, as rightly pointed out by the learned counsel for the Respondent, a defence was taken that what the parties are entitled to is not a declaration, but it can be at best a share in the property. Despite the same, the Plaintiff for the reasons best known to him



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had not moved the amendment application. Be that as it may, I should not forget that it is the duty of the Court to grant the relief that the Plaintiff is actually entitled to. A Court should not deny a relief that a party is entitled to, merely because he/she has asked for something beyond the actual entitlement.

9. The delay that had been caused should have been upset by examining the cause and the application should have been allowed. Unfortunately, that had not been done so in the present case. Taking into account overall circumstances in the situation, I am of the view that the amendment application ought to have been allowed because it neither changes the cause of action nor it has introduced a new case for the Plaintiff. Both the parties are aware of the source of title and if the Court gives a declaration, it does not create a new right in the parties, but only declares the right that they have pleaded in the suit.

10. In fine, this Civil Revision Petition is allowed. No costs. Consequently, the connected MP is closed. The impugned order dated, 10.11.2021 passed in IA.No.Nil of 2020, in AS.No.9 of 2017, by the Principal Subordinate Court, Tindivanam is set aside. The court below is directed to number the application filed for amendment and allow the same without going into the merits of the same. The Plaintiff will be entitled to amend the Plaint and on such amendment being carried out, the Defendant is entitled to file a written statement. As the records are already placed before this Court, there is no necessity to let in fresh evidence in the proceedings. For the delay caused in



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filing the amendment application, a cost of Rs.10,000/- is imposed on the Plaintiff to be paid to the Defendant on or before 15.07.2024, failing which, the leave granted in this order shall stand automatically revoked.

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26.04.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Neutral Citation
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To

The Principal Subordinate Court, Tindivanam.



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V.LAKSHMINARAYANAN, J.

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