



CRP.No.725 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

Civil Revision Petition No.725 of 2015

and

M.P.No.1 of 2015

Thangammal (died)

1. Jeyasudha

... Petitioner

Vs.

1. Arthanari Gounder

2. Jeevarathinam

3. Pappathi

4. Sarasu

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 16.02.2012 in I.A.No.770 of 2021 in I.A.No.608 of 2010 in O.S.No.71 of 1997 on the file of Learned District Munsif cum Judicial Magistrate, Paramathi Velur.

For Petitioner : Mr.S.Victor Prasath

For Respondents : R1- Dismissed
[vide court order dated
10.02.2023]
RR2 to R4 – Notice send



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ORDER

This civil revision petition has been filed against the order dated 16.02.2012 in I.A.No.770 of 2011 in I.A.No.608 of 2010 in O.S.No.71 of 1997 on the file of the District Munsif cum Judicial Magistrate, Paramathi Velur.

2. The petitioner is the second plaintiff, the first and second respondents are defendants 1 and 3 and respondents 3 and 4 are legal heirs of second defendant in the suit in O.S.No.71 of 1997 filed for the relief of partition and separate possession.

3. In the said suit, preliminary decree was passed on 07.11.1994. Following the preliminary decree, an application in I.A.No.608 of 2010 was filed to divide the suit property. In the meantime, the second defendant died on 18.02.2011 and her legal heirs are brought on record by order dated 30.09.2011 in I.A.No.272 of 2011. Subsequently, the petitioners herein filed an application in I.A.No.770 of 2011 in I.A.No.608 of 2010 under Order 6 Rule 9 and 17 CPC to amend the plaint and final decree application.



4. First, fourth and fifth respondents filed their counter opposing the petition filed by the petitioners. After hearing both sides and by following the settled law on this aspect, the Court below is not inclined to allow the said application and dismissed the same by order dated 16.02.2012. Aggrieved by the same, the present Civil Revision Petition has been filed.

5. The learned counsel for the petitioner submits that the Court below failed to note that the amendment sought for is only consequential to implead the legal heirs of the deceased second defendant as defendants 4 and 5 and this will defeat the valuable right for partition of properties in the suit. When the legal heir application is allowed, the rejection of consequential amendment is nothing but formal in nature and the same may be allowed automatically. The learned counsel further contends that the Lower Court failed to see that the claim of non joinder of parties in the suit at that stage is also not maintainable. It is settled law that non joinder of necessary parties should be raised at the earliest point of time. The Court below failed to note that the amendment sought for do not change the nature and character of the suit nor the cause of action and the defendants/respondents will not be put to any prejudice. The learned



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Judge failed to see that Order 6 Rule 17 C.P.C. filed pursuant to the order passed in Order 22 Rule 4 of C.P.C which adds a new relief unless it causes injustice to bring the legal representatives of the deceased defendant.

6. The learned counsel further contends that since the second defendant purchased the suit property from the first defendant subsequent to the agreement of sale between the plaintiff and the first defendant, a prayer directing both defendants to execute a sale deed in favour of the plaintiff is perfectly valid and will avoid multiplicity of proceedings.

7. The learned counsel further contends that the reasonings of the Court below for refusing the amendment of plaint and a final decree application was contrary to law and unsustainable and accordingly, sought to set aside the order dated 16.02.2012 passed in I.A.No.770 of 2011 in I.A.No.608 of 2010 by allowing the Civil Revision Petition.

8. The learned counsel appearing for the respondents submits



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18.02.2011, the second defendant Chinnammaly wife of Ponnusamy died. She has two daughters by name Sarasu and Pappathi. The said Sarasu and Pappathi had filed an application to add them as 4th and 5th defendants in the plaint and final decree application.

11. The contention of the respondents is that preliminary decree was obtained without adding the legal heirs of the second defendant Chinnammal and as such now the present application to amend the plaint and final decree application could not be entertained.

12. On careful perusal of the records, it is establishing that after obtaining the preliminary decree on 07.11.1994, the second defendant Chinnammal died on 18.02.2011 and her daughters Sarasu and Pappathi are impleaded vide order dated 30.09.2011 in I.A.No.272 of 2011. In the preliminary decree, 1/18 share is determined to second defendant Chinnammal, but the petitioners herein pray to add the legal heirs of the second defendant Chinnammal in the plaint by way of amendment.

13. The Court below has considered the proposition of law laid



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down by this Court in the case of ***Padmavathi Vs. Kaveriammal*** reported

in ***2008 (2) CTC 208*** by following the *ratio decidendi* in the case of

Phoolchand And Anr Vs. Gopal Lal reported in ***AIR 1967 SC 1470*** held

that the proposed amendment in the plaint and in the final decree application without decide the share of proposed party Sarasu and Pappathi is unsustainable as per the settled law and dismissed the petition by its order dated 16.02.2012.

14. Taking into consideration the facts and circumstances of the case and the judgment of this Court relied by the Court below, this Court is of the opinion that the second defendant died subsequent to passing of the preliminary decree and her legal heirs are brought on record by order dated 30.09.2011 in I.A.No.272 of 2011. Hence, the Court has to decide their share in this case at first instance and without deciding the share of the proposed party, the proposed amendment in the plaint and final decree application is unsustainable as per the settled law. As such, the Court below has rightly dismissed the application and as such no interference of this Court is warranted into the order passed by the Court below dismissing the petition filed by the petitioners.

BATTU DEVANAND, J.



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Accordingly, this Civil Revision Petition is dismissed. No costs.

Connected miscellaneous petition is closed.

19.06.2024

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

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To

1. District Munsif cum Judicial Magistrate,
Paramathi Velur.
2. The Section Officer
VR Section
Madras High Court.

C.R.P.No.725 of 2015