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C.R.P.(PD).No.1008 of 2020
and C.R.P.(PD).No.3095 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.1008 of 2020

and

C.R.P.(PD).No.3095 of 2022

and C.M.P.No.5527 of 2020

C.R.P.(PD).No.1008 of 2020:

P.Murugesan

... Petitioner

VS

1.Subramanian

2.Sankaran

3.Murugesan

4.Palaniappa gounder

5.Palaniammal

6.Srinivasan

7.Vetrivel

... Respondents



C.R.P.(PD).No.1008 of 2020
and C.R.P.(PD).No.3095 of 2022

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 02.08.2019 made in I.A. No. 533 of 2012 in O.S. No. 46 of 2011 on the file of the learned Sub Court, Sankari.

For Petitioner : Mr.N.Manoharan

For R1 to R3 : Mr.R.Marudhachalamurthy

For R4 to R7 : No Appearance

C.R.P.(PD).No.3095 of 2022:

1.Subramanian

2.Sankaran

3.Murugesan ... Petitioners

VS

1.Palaniappa gounder

2.Palaniammal

3.Murugesan

4.Srinivasan

5.Vetrivel ... Respondents



C.R.P.(PD).No.1008 of 2020
and C.R.P.(PD).No.3095 of 2022

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the Fair and Decreetal order dated 02.08.2019 in respect of petition is dismissed with regard to the item Nos.2 and 3 in the proposed amendment in I.A.No.533 of 2012 in O.S.No.46 of 2011 on the file of the Sub Ordinate Judge, Sankari.

For Petitioners : Mr.R.Marudhachalamurthy

For R3 : Mr.N.Manoharan

For R1, R2, R4
and R5 : No Appearance

COMMON ORDER

These Civil Revision Petitions are filed against the order passed by the Court below partly allowing the amendment application filed by the petitioners in C.R.P.(PD).No.3095 of 2022.

2. The petitioners in C.R.P.(PD).No.3095 of 2022 filed a suit for partition claiming 1/6 share in the suit properties. Pending suit, the petitioners in C.R.P.(PD).No.3095 of 2022 filed an amendment application to include 3



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items of properties in the plaint schedule. According to them, the parties are sharers and though the patta for the suit items stand in the name of petitioners and defendants, they have been paying kist to the properties in respect of their share. It was also asserted by the petitioners in C.R.P.(PD).No.3095 of 2022 that they had been in joint possession with the respondents in respect of those properties.

3. The said application was resisted by the petitioner in C.R.P.(PD).No.1008 of 2020 on the ground that petitioners in C.R.P.(PD).No.3095 of 2022 had no right over 3 items of properties sought to be included in the plaint schedule. It was further contended that the petition mentioned properties were self-acquired properties of 3rd defendant-Murugesan.

4. The Court below based on the documents filed by the petitioner in C.R.P.(PD).No.1008 of 2020 along with his counter to amendment petition, came to the conclusion that Items 2 and 3 of the petition mentioned properties were purchased by father of 3rd defendant and patta for the same stood in the



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name of 3rd defendant-Murugesan. Therefore, the Court below came to the conclusion that Items 2 and 3 were self-acquired properties and hence, the revision petitioners in C.R.P.(PD).No.3095 of 2022 cannot lay claim over the same. Therefore, the amendment application was dismissed in respect of Items 2 and 3. However, the same was allowed in respect of Item-1 on the ground that the respondents in amendment application failed to file any document to show their exclusive title over the same.

5. Whether the property is self-acquired property of 3rd defendant or not is not the matter to be decided at the time of considering the petition for amendment of certain left out properties in a suit for partition. The Court need not go into the merits of the case and decide the character of the property at the time of considering request for amendment. Therefore, the order passed by the Court below partly dismissing the amendment application in respect of Items-2 and 3 is liable to be set aside. However, it is made clear that it is open to the petitioner in C.R.P.(PD).No.1008 of 2020 to file additional written statement and raise all the defences available to him under law.



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6. In view of the discussions made earlier, the Civil Revision Petition in C.R.P.(PD).No.3095 of 2022 is allowed by setting aside the dismissal of the amendment application in respect of Items 2 and 3. Therefore, the amendment application filed by the petitioner in C.R.P.(PD).No.3095 of 2022 is allowed in *toto*.

7. As a necessary consequence, C.R.P.(PD).No.1008 of 2020 against allowing of amendment application in respect of Item-1 stands dismissed. No Costs. Consequently, the connected civil miscellaneous petition is closed.

09.01.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

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The Subordinate Judge,
Sankari.



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S.SOUNTHAR, J.

dm

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