



C.R.P. No.1307 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2024

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THE HONOURABLE Mr. JUSTICE P.DHANABAL

CRP. No.1307 of 2022
and C.M.P. No.6934 of 2022

1. R. Tamilselvi W/o. M. Balakrishnan
2. B. Arunraj S/o. M. Balakrishnan
3. B. Sanju D/o. M. Balakrishnan
4. B. Anusa D/o. M. Balakrishnan ...Petitioners / Respondents /
Plaintiff.
Vs.

1. Kasinathan (died) S/o. C.P. Manika Gounder
2. Dayalan S/o. C.P. Manikka Gounder
3. Sundarammal W/o. Kumaresan
4. Nirmala Kasinathan W/o. Late Kasinathan
5. M.K.Kandhaswamy S/o. Late Kasinathan
6. Sathish Kasinathan S/o. Late Kasinathan
7. Prabhu Kasinathan S/o. Late Kasinathan
[The 1st respondent died and the respondents 4 to 7
are brought on record as legal representatives of deceased
1st respondent vide order dated 30.07.2024 in
C.M.P. Nos.15407, 15410 and 15414 of 2024] Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the order of dismissal dated 17.12.2019 passed in I.A. No.4 of 2019 in O.S. No.16 of 2015 on the file of the III Additional District Court, Vellore at Tirupattur.

For Petitioners : Mr.P.A. Sudesh Kumar



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For Respondents : R1 - died.
R2 & R3 - No appearance.
R4 to R7-Mr. N.C. Thirumalai Balaji

ORDER

The Civil Revision Petition is filed challenging the order passed in I.A. No.4 of 2019 in O.S. No.16 of 2015, wherein these respondents herein have filed a petition before the Trial Court to include the properties and the same was allowed.

2. The case of the petitioners is that the petitioners are the Plaintiffs in the main Suit and the Suit was filed for partition and separate possession. While pending Suit, the respondents herein filed petition to include the properties by way of amending the schedule of the properties and the same was allowed. Against which, the present civil revision petition is filed.

3. According to the respondents, they are the defendants and the property belonged to the joint family and the said property is not a separate property of the deceased Balakrishnan. Therefore, the property is also available for partition. The Trial Court after considering that the property is a joint family property, allowed the application. Therefore, the order passed by the Trial Court is proper.



4. The learned counsel appearing for the petitioners would contend that they are the Plaintiffs in the main suit and the Plaintiffs filed the Suit for partition and separate possession. While pending Suit, the deceased 1st respondent Kasinathan had filed an application to include the properties in the Plaint schedule property by way of amendment and the same was allowed. In fact, the properties belong to one Balakrishnan and the properties are his separate properties and they are not the joint properties and hence they cannot be included in the Plaint schedule and the properties are not available for partition. But the Trial Court failed to consider the same and allowed the application. Therefore, the order passed by the Trial Court is liable to be set aside.

4(i) In support of his contention, the learned counsel appearing for the petitioners has relied upon judgment in ***Solavaiammal W/o. Ettappa Goundar and 3 others vs. Ezhumalai Goundar S/o. Ettappa Goundear and others reported in 2012 (1) CTC 159.***

5. The learned counsel appearing for the respondents would contend that they are the defendants in the main Suit and the petitioners herein filed an application to include the properties of these respondents and the same was



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dismissed by the Trial Court. These respondents filed an application to include the joint family property, which is purchased through joint family income in the name of Balachandar. At the time of filing the Suit, they were omitted to be included. The Trial Court, after elaborate discussion, allowed the petition by holding that since the suit is for partition, the petition in respect of the Suit properties in Item No.1 and 2 stands in the name of the Balakrishnan alone to be added as suit properties and hence the present civil revision petition is liable to be dismissed.

6. Heard both sides'. Perused all the materials available on record.

7. The main Suit is filed for the reliefs of partition and separate possession in respect of the suit property. According to the petitioners, the respondents being the defendants, filed an application to include the properties as Suit properties alleging that the said properties are also joint family properties. In fact, the said properties are self acquired properties of deceased Balakrishnan and they are not the joint family properties, therefore, they are not available for partition. The respondents, being the defendants, cannot compel the petitioners / plaintiffs to include the properties, which are not the joint family properties. According to the respondents, the properties belong



to joint family properties and thereby, they are available for partition. It is well settled law that the Plaintiff is the *dominus litis* and the defendants cannot compel the Plaintiffs to include the properties. If any properties are omitted, then the Plaintiffs have to face the other legal consequences like partial partition etc.,

8. At this juncture, the learned counsel appearing for the petitioners has relied upon judgment in ***Solavaiammal W/o. Ettappa Goundar and 3 others vs. Ezhumalai Goundar S/o. Ettappa Goundear and others reported in 2012 (1) CTC 159***, wherein the Division Bench of this Hon'ble Court in Para 14 and 19 held as follows:-

"14. In P. Arumugham and another v. P. Balasubramaniam and others, 2008(7) MLJ 1210, a learned Judge of this Court has held as follows:-

"Merely because the Plaintiff owing to some motive or as per his own stand did not include certain items in the suit property, it would not lead to the conclusion that the Suit is bad for partial partition. There are instances where the parties would deliberately leave certain items of properties, without any valid reasons for getting it divided at once, but to get them divided at a later date at their own whims and fancies and in such a case, the Court could hold that the Suit is bad for partial partition. Even in such cases, the Courts have got the power to direct that the left out items also should be included in the partition, once there are evidence available on record that those items are co-parcenary properties".

19. However, in an Application for amendment, the Court has to prima facie satisfy itself as to whether the properties are available for partition or not, as a detailed adjudication on the claim is improper. If there is a dispute over the inclusion of properties by the Plaintiff contending that those properties are not available for partition, the



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Court is certainly entitled to reject the Application for amendment on that ground. In such event, the only course open to the Defendant is to file a Suit for partition by including those properties. As we have been called upon to answer the question as to whether the Application under Order 6, Rule 17 of the Civil Procedure Code seeking for amendment of the Schedule to the Plaint in a Partition Suit at the instance of the Defendant is maintainable or not, we answer the said issue by holding that while considering such an Application, it is for the Court to decide on the facts of each case. The reference is answered accordingly".

On careful perusal of the above judgment, it is clear that in a partition Suit, the defendant cannot compel the Plaintiff to include the property, which is not belongs to joint family. In the partition Suit, if the Plaintiff failed to include the property by denying that it is not joint family property, the remedy available to the respondents to file a separate Suit.

9. In the case on hand also, the defendants filed an application before the Trial Court to include the properties, but the Plaintiffs denied the nature of the properties. Therefore, the said judgment is squarely applicable to the present facts of the case. If the respondents are able to prove that the properties are joint family properties, it is for the Trial Court to decide the case whether it is bad for partial partition or not. The Trial Court, without considering the said legal proposition, allowed the amendment petition to include the property.

10. The learned counsel appearing for the respondents also relied



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judgment in *Delhi Development Authority vs. Ashok Kumar Behal and others reported in (2002) 7 Supreme Court Cases 135* - on perusal of the above said judgment, it is seen that it will not be applicable to the present facts of the case.

11. In view of the above discussions, this Court is of the opinion the order passed by the trial Court is liable to be set aside by allowing the Civil Revision Petition.

12. In the result, the civil revision petition is allowed. The order passed in I.A. No.4 of 2019 in O.S. No.16 of 2015 on the file of the III Additional District Court, Vellore at Tirupattur, is set aside and the petition in I.A. No.4 of 2019 is dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

29.07.2024

Index : Yes/No
Speaking order/non-speaking order
mjs

To
The III Additional District Court, Vellore at Tirupattur.



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P.DHANABAL, J.,

mjs

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