



C.R.P.No.1782 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 22..08..2024

Coram

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition No.1782 of 2022

and

C.M.P.No.8969 of 2022

N.Mustak Sheriff

..... Petitioner

-Versus-

- 1.Ghouse Bi Ammal (Died)
- 2.N.Mohadeen Sherif
- 3.N.Mahaboob Sheriff
- 4.N.Sardar Sheriff
- 5.N.Ismail Sheriff
- 6.N.Mallika Begum
- 7.N.Chan Begum
- 8.P.Rajamanickam (Died)
- 9.S.Suresh
- 10.J.Govindan (Died)
- 11.J.Abdul Kalam
- 12.J.Mohamed Sheriff
- 13.J.Piyaru
- 14.J.Mackbool
- 15.M.Jareeunnisa (Died)
- 16.Chan
- 17.Mohammed Shafi
- 18.M.Mohammed Ghouse



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19.M.Mohammed Riyas

20.Haseena Begum

21.Maharaj

..... Respondents
Petition filed under

Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 02.11.2021 passed by the learned I Additional Subordinate Judge, Salem, in I.A.No.1 of 2020 in O.S.NO.118 of 1996.

For Petitioner : *Mr.S.Mukunth,*
Senior Counsel for
Mr.M.Kaviveerappan

For Respondent (s) : *Ms.Sumithra Vasudevan*

No appearance for RR2 to 6, 11
to 14 and 16 to 21

RR 1, 7, 8 10 & 15 Died

ORDER

This civil revision petition arises out of a suit for partition.

2. The plaintiff is the civil revision petitioner. The suit was presented in the year 1996. The claim of the plaintiff is that the properties that had been allotted to one Navab Sherif, who is the father of the plaintiff and defendants 2 to 7 and husband of the 1st defendant. Pending the suit, the defendants filed an application in I.A.No.29 of 2018 to include certain properties .The said application came to be dismissed and it has become final. Thereafter, the



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plaintiff took out an application to include certain properties, which according to the plaintiff, were also subject matter of allotment during the settlement proceedings. That application was numbered as I.A.No.1 of 2020 and notice was ordered to all the defendants. It was only the 2nd defendant, who opposed the application. According to the 2nd defendant, since the previous application for amendment to include certain properties had been dismissed the present application also does not deserve consideration. The learned Judge dismissed the application on two grounds. The first ground being the dismissal of the application in I.A.NO.29 of 2018 and the other ground being that the application is vague and does not include the material particulars. Hence, this revision petition.

3. I had ordered notice to the 2nd respondent, the only defendant who contested the amendment application. The 2nd defendant could not be served through the process of court. Therefore, invoking the powers vested in this court by the appellate side rules, I had ordered notice to the counsel who appeared for the 2nd respondent in the court below. Accordingly, the learned counsel for the civil revision petitioner had taken notice and it was served on 10.05.2024 on the learned counsel who appeared for the 2nd respondent in the court below. Still



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there is no appearance for the 2nd respondent. The learned counsel representing the 7th defendant has no objection for the amendment being granted.

4. Heard Mr.S.Mukunth, learned senior counsel for Mr.KaviVeerappan, learned counsel on record for the civil revision petitioner and Ms.Sumithra Vasudevan for the 7th respondent.

5. I have gone through the records.

6. The entire case of the plaintiff is based on the settlement proceedings under which his father had been given properties. At the time of drafting of the plaint, the property that is sought to be included had been left out. In order to rectify that error an application had been filed. The learned Judge has demanded the plaintiff to prove that the property that is proposed to be included was granted under the settlement deed to the father.

7. At the stage of considering an amendment application, the court should not go into the merits of the application. It should only see, whether the application changes the cause of action and/or it is barred by limitation. Being suit for partition, the cause of action arises day-to-day and hence, it is not barred by limitation.

8. Insofar as the cause of action is concerned; by granting an amendment



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it continues to be a suit for partition and therefore, even that ground does not exist. In addition, I have to recollect the position that in a suit for partition all the properties have to be included and in case, they are not, the suit would have to be dismissed for partial partition. In fact, even at the second appellate stage, the court can exercise its jurisdiction of amendment and include the properties left out at the time of presentation of the plaint.

9. In this case, parties are still before the trial court and the evidence is not concluded. Therefore, no prejudice will be caused to the defendants in case the amendment is granted.

10. The other ground that the previous application for amendment had been dismissed and therefore, this application deserves dismissal also does not hold water. This is because, the property that was sought to be included in I.A.No.29 of 2018 is not the same property that is sought to be included in the present application in I.A.No.1 of 2020. I am therefore unable to sustain the order of the learned I Additional Subordinate Judge at Salem.

In the result, the civil revision petition is allowed. The order dated 02.11.2021 made in I.A.No.1 of 2020 in O.S.No.118 of 1996 by the learned Additional Subordinate Judge at Salem, is set aside. Leave is granted to the



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plaintiff to amend the plaint. No costs. Consequently, connected CMP is closed.

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Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
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To

1.The I Additional Subordinate Judge, Salem, Salem District.



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V.LAKSHMINARAYANAN.J.,

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