



CRP.No.1447 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.1447 of 2020

and

CMP.No.8332 of 2020

T.Vasuki (Died)

2.R.Kanmani

... Petitioners

(sole petitioner died. Petitioner-2 brought on record as LRs of the deceased sole petitioner-1 viz., T.Vasuki vide Court order dated 13.12.2022 made in CMP.Nos.21451, 21453, 21455 of 2022 in CRP.No.1447of 2020)

Vs.

K.Tamilselvi

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the orders of the Court of the Subordinate Judge, Udumalpet, dated 22.02.2020 and passed in IA.No.999 of 2019 in OS.No.124 of 2013.



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For Petitioners : Mr.N.Thiagarajan

For Respondent : Mr.N.Umapathi

ORDER

This Civil Revision Petition is filed challenging the order passed by the Court below dismissing the amendment application filed by the petitioner.

2. The petitioner herein filed a suit for partition against the respondent in respect of the properties of her paternal grand mother. According to the plaint averment, the suit properties originally belonged to paternal grand mother of the parties. The father of the parties Krishnasamy Gounder got the suit properties by succession from his mother. Thus, as real heir of the said Krishnasamy Gounder, the petitioner and the respondent are entitled to $\frac{1}{2}$ share in the suit properties.

3. Pending suit, the petitioner herein filed an amendment



application to include one more item in the plaint. As per affidavit filed in support of the amendment application, the property sought to be included in the plaint were the ancestral properties of their father Krishnasamy Gounder, who died intestate. The said property also sought to be divided among the parties. The said amendment application was dismissed by the Court below on the ground that earlier the petitioner claimed the suit properties as separate property of Krishnasamy Gounder and by virtue of amendment application, the petitioner wants to take up inconsistent stand as if the suit properties are ancestral properties of Krishnasamy Gounder.

4. Earlier the petitioner filed the suit only in respect of one item. As per the avement in the plaint, the item No.1 belonged to father of the parties Krishnasamy Gounder and he got the same from his mother. Now, the petitioner wants to include yet another item in the plaint schedule as item No.2. According to the petitioner, the second item now sought to be introduced is the ancestral properties of the said Krishnasamy Gounder and therefore, the petitioner and the respondent are entitled to $\frac{1}{2}$ share in both the suit properties. Therefore, the averment made by the petitioner in respect of



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ancestral nature of the property is only in respect of new properties introduced in the plaint and not in respect of the item No.1 in respect of which originally the suit was filed. Therefore, there is no inconsistency in the pleadings to be introduced by way of amendment. In order to decide the dispute among the parties and to prevent the multiplicity of proceedings, the present amendment application is liable to be allowed. Even if the amendment application is dismissed and suit is allowed to go on with 1st item alone, the suit is bad for partial partition. Therefore, the amendment application filed by the petitioner to introduce one more item in the schedule to the plaint is liable to be allowed and accordingly, the Civil Revision Petition is allowed. As a consequence IA.No.999 of 2019 in O.S.No.124 of 2013 is also allowed. The petitioner is permitted to carry out the necessary amendment within a period of two weeks from the date of receipt of copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

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To

The Subordinate Judge, Udumalpet.



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S.SOUNTHAR, J.

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