



C.R.P.(PD).No.2011 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2024
Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).No.2011 of 2023 &
C.M.P.No.12612 of 2023

Saminathan Mudaliar (Deceased)
S.Sekar

... Petitioner

-Versus-

1.Arumugam Mudaliar
2.Angammal

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair order and decretal order dated 03.02.2023 made in I.A.No.431 of 2020 in O.S.No.13 of 2014 by the learned Subordinate Judge at Gingee.

For Petitioner : *Mrs.G.Sumitra*

For Respondents : *Ms.G.Lavanya*

ORDER

The civil revision petition arises against the order passed in I.A.No.431 of 2020 in O.S.No.13 of 2014 on the file of the learned Subordinate Judge at



C.R.P.(PD).No.2011 of 2023

WEB COPY

2. O.S.No.13 of 2014 is a suit for partition and separate possession filed by the respondents herein seeking for allotment of 2/3rd share in the suit schedule mentioned properties.

3. On service of summons, the defendant had also filed a detailed written statement.

4. On the basis of these pleadings, issues were framed and the matter went to trial. On the plaintiffs' side, they examined themselves. While it was posted for defendant's evidence, an application came to be taken out in I.A.Nos.480 of 2021 and 431 of 2020.

5. By virtue of I.A.No.480 of 2021, the plaintiffs sought permission of the court to mark additional documents on their side. The relief sought for in I.A.No.431 of 2020 is for amendment of the schedule of the property to the plaintiff. The basis on which the amendment was sought for is that in order to identify the suit schedule mentioned property clearly, they wanted to correlate



C.R.P.(PD).No.2011 of 2023

the present survey number of the property with paimash number. In addition, they would plead that since they have come across some documents, which would point out their rights over the proposed properties, they wanted to amend the plaint by including the details as aforesaid in the schedule of the property alone.

6. On being served with the notice in the amendment application, the civil revision petitioner/ defendant took a stand that the amendment application is belated and the plaintiffs are trying to drag on the matter. He would plead that the amendment application is being presented after the delay of eight years. He would state that the introduction of paimash number and cadastre number is irrelevant as they are foreign to the revenue system which is prevailing in the State of Tamil Nadu. He would plead that paimash number and cadastre number are relevant only in Pondicherry, which followed the French form of classification of lands. On this basis, they would plead for dismissal of amendment application.

7. On consideration of both counter and affidavit, the learned Trial Judge came to a conclusion that the amendment should be allowed and accordingly,



C.R.P.(PD).No.2011 of 2023

allowed the same. Challenging the same the present civil revision petition.

WEB COPY

8. I have heard Mrs.G.Sumitra for the petitioner and Ms.G.Lavanya for the respondents.

9. Mrs.G.Sumitra would vehemently contend that the application for amendment came to be filed 8 years after the plaint had been presented and that too, at the stage, when DW1 was about to enter the witness box. She would state that by virtue of amendment, certain new properties were sought to be included. As the plaintiffs have not shown due diligence, provisions of Order 6 Rule 17 proviso must be invoked and would seek the revision to be allowed and dismissal of the petition.

10. Ms.G.Lavanya would submit that amendment does not change the character of the suit nor does it change the frame of the suit and being a suit for partition, it is also not affected by vires of limitation. She would plead that the lower court had exercised its discretion and therefore, this Court need not interfere with the same in the exercise of the revisional powers under Article 227 of the Constitution of India.



11. The cause of action in a suit for partition arises day-to-day. In fact, if the plaintiffs were to present a fresh suit for partition today by including the very same proposed properties which are the subject matter of amendment, then the question of applying the principle of limitation would not arise. As pointed out by Mrs.G.Sumitra, the plaintiffs would have been diligent in approaching the court by way of amendment.

12. The crucial principle for allowing the application for amendment is that it should not change the frame of the suit, the character of the suit or take the defendant by way of surprise by a new plea. None of these applies to the facts of the present case. The learned Trial Judge has exercised his discretion and a reading of the order shows that he has applied the correct principles of laws to the facts before the court.

13. In fact, the amendment application to introduce new properties could have been filed by the defendant as well. Therefore, it matters not that the application was filed at a belated stage. The entire idea is that all the property must be divided. The court grants a decree, in case it comes to a conclusion that the plaintiffs are entitled for share with respect to all the properties matters involved in the suit.



C.R.P.(PD).No.2011 of 2023

WEB COPY

14. The first portion of the amendment is merely clarificatory which includes the relevant survey numbers and their corresponding paimash numbers.

The subsequent portion of the prayer includes the property over which the plaintiffs have recently discovered that they have a right.

15. Considering the overall circumstances, I am inclined to confirm the order of the learned Subordinate Judge, Gingee in I.A.No.431 of 2020 in O.S.No.13 of 2014 dated 03.02.2023. The respondents/plaintiffs, for the delay that had been cast in moving the application, shall pay a cost of Rs.10,000/- to the petitioner/defendant. The cost shall be paid within four weeks from the date of receipt of a copy of this order. Once the learned Subordinate Judge is convinced that the costs have been paid, he shall thereafter permit the defendant to file his additional written statement which shall of course be confined to the new pleas that have come in by way of amendment.

16. With the above directions, this civil revision petition is allowed with the aforesaid conditions. No costs. Consequently, the connected miscellaneous



C.R.P.(PD).No.2011 of 2023

petition is closed.

WEB COPY

09.07.2024

nl

Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order

To

1.The Subordinate Judge at Gingee.



WEB COPY



C.R.P.(PD).No.2011 of 2023

V.LAKSHMINARAYANAN, J.

nl

C.R.P.(NPD).No.2011 of 2023 &
C.M.P.No.12612 of 2023

09.07.2024