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C.R.P.(PD).No.1540 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.1540 of 2021
and CMP.No.12062 of 2021

N.Palanisamy

... Petitioner

vs.

1.S.Lingappan
2.Udhaya Prabha
3.Valliyathal

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order of the learned II Additional District Judge, Tiruppur in I.A.No.1 of 2020 (I.A.No.772 of 2020) in O.S.No.248 of 2015, dated 12.03.2021 and allow this Civil Revision Petition.

For Petitioner
For Respondents

: Mr.J.Franklin
: R1-Refused
No appearance for R2 and R3



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ORDER

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The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the amendment application filed by the petitioner/first defendant.

2. The first respondent herein filed a suit for partition. The first respondent is the paternal uncle of the petitioner and other respondents. The suit filed by the first respondent was resisted by the petitioner on the ground that 40 cents of land in S.No.523/1 belonging to grandfather of the petitioner and father of the first respondent viz., Selambara Gounder was not included in the suit schedule and hence the suit was bad for of partial partition. Later on, the petitioner/first defendant filed an application seeking amendment of the plaint so as to include the left out property in the schedule to the plaint. The said application was dismissed by the Court below on the ground that the amendment application was belated after commencement of the trial.

3. It is seen from the written statement filed by the petitioner that he already raised a plea of partial partition, wherein, it was mentioned



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that 40 cents of land in S.No.523/1 was left out in the schedule. If the petitioner is really interested in comprehensive partition, he could have filed an application for amendment earlier.

4. It is seen from the impugned order, the plaintiff side evidence is already over and the other defendants also examined the witnesses, now this matter is posted for recording the evidence of petitioner/first defendant and at this belated stage, the petitioner filed petition for amendment of the plaint.

5. In the affidavit filed in support of the amendment application, the petitioner has not stated any reason for his failure to seek amendment prior to the commencement of the trial notwithstanding mentioning of the property left out in the written statement. In such circumstances, the mandate of proviso amended Rule 17 of Order VI of CPC has not been complied with and consequently, the Court below rightly dismissed the amendment application.



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6. Notwithstanding the dismissal of the amendment application, the Court can go into the question, whether the property mentioned in the written statement of the petitioner is also available for partition.

7. I do not find any infirmity or irregularity in the order passed by the Court below and accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

31.01.2024

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

The II Additional District Judge,
Tiruppur.



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S.SOUNTHAR, J.

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