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C.R.P.Nos.1566 & 1569 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.1566 & 1569 of 2021 and

C.M.P.No.12229 of 2021

1.Marakkal

2.Arayer

... Petitioners in both C.R.P's

Vs.

1.Periyakkal

2.Rathinavel

3.Alamelu

Palaniappan (Died)

4. Lakshmi

...Respondents in CRP.No.1566 of 2021

1.Periyakkal

2.Rathinavel

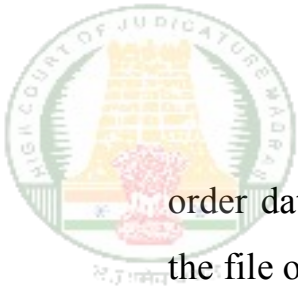
3.Alamelu

Palaniappan

...Respondents in CRP.No.1569 of 2021

PRAYER in CRP.No.1566 of 2021: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decretal order dated 21.01.2020 made in I.A.No.08 of 2010 in A.S.No.07 of 2009 on the file of the c

PRAYER in CRP.No.1569 of 2021: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decretal



C.R.P.Nos.1566 & 1569 of 2021

order dated 21.01.2020 made in I.A.No.50 of 2011 in A.S.No.07 of 2009 on the file of the Sub-Ordinate Judge, Sankari.

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For Petitioners in both C.R.P's : Mr.R.Marudhachalamurthy
For Respondents in both C.R.P's : Notice served-No appearance

COMMON ORDER

The C.R.P.No.1566 of 2021 is filed challenging the order passed by the Court below dismissing the application filed by the petitioner to produce additional evidence under Order 41 Rule 27 of CPC.

2. The C.R.P.No.1569 of 2021 is filed challenging the order passed by the Court below dismissing the application filed by the petitioner to amend the plaint.

3. The petitioners herein filed a suit for partition claiming 1/4th share in the suit property. The suit was partly decreed by granting 1/4th share in favour of both the petitioners jointly. Aggrieved by the same, the petitioners preferred an appeal in A.S.No.7 of 2009 on the file of learned Sub-Judge, Sankari.



Pending appeal, the petitioners filed two applications in I.A.No.8 of 2010 and I.A.No.50 of 2011 for production of additional evidence and to amend the plaint. Both the applications were dismissed by the First Appellate Court. Aggrieved by the same, the petitioners are before this Court.

4. In the affidavit filed in support of the petition for amendment in I.A.No.50 of 2011, it was stated by the petitioners that Trial Court found that the suit properties are ancestral properties of petitioners' father namely Chinnappan. In order to prove the suit properties are self acquired properties of Chinnappan, the petitioners want to produce sale deed executed by Chinnappan in favour of Periya gounder in respect of $\frac{1}{2}$ share on 12.10.1955. The petitioners also wanted to amend the pleadings in order to include certain facts relating to sale of property by Chinnappan in favour Periya gounder. The petitioners also wanted to include a plea that there was a division of status between their father and 4th defendant as early as 1955.

5. The amendment application was dismissed by the First Appellate Court on the ground that the character of the suit property was very much in



dispute in the suit. The petitioners failed to assign any reason for their failure to seek amendment of the plaint before the Trial Court. As far as petition for reception of additional evidence is concerned, the Court below observed that when the amendment which is the basis for leading additional evidence is rejected, as a necessary consequence, the petition for reception of additional evidence should also be dismissed.

6. The learned counsel for the petitioner submitted that the Trial Court had given a finding that the properties are ancestral properties of Chinnappan and in order to prove the properties are self acquired properties of petitioners' father Chinnappan, the amendment sought for and the document produced as additional evidence are absolutely necessary to prove the case of petitioner.

7. As per the amended provision of Order VI Rule 17 of CPC, a person seeking amendment shall convince the Court why he failed to seek such amendment prior to commencement of trial. In the case on hand, the 4th defendant in his written statement had taken a categorical stand that properties are ancestral properties. Therefore, the character of the suit property was very



much in dispute even before the Trial Court. Immediately after filing of the written statement by the 4th defendant, the petitioners could have filed an application seeking amendment of the plaint so as to include the facts which they want to include by way of amendment. In the affidavit filed in support of the amendment application, the petitioners failed to give any reason for their failure to seek amendment of the plaint prior to commencement of the trial. Now, after the Trial Court has given a categorical finding regarding the character of the property as ancestral one, in order to overcome that finding, the petitioners are making an attempt to amend the plaint and the same is not permissible when no acceptable reason is given for their failure to seek amendment prior to commencement of the trial. Accordingly, I do not find any illegality or irregularity in the order passed by the Court below dismissing the amendment application. Hence, the C.RP.No.1569 of 2021 is dismissed.

8. It is settled law that an application for reception of additional evidence shall be considered along with the appeal and the same shall not be disposed separately. In the case on hand, the petitioners filed I.A.No.8 of 2010 for reception of additional evidence. The petitioner want to produce the sale



deed executed by his father Chinnappan in favour of Periya gounder as an additional evidence in support of his plea that the suit property is a self acquired property of Chinnappan. At the time of final disposal of the appeal, the Court shall consider this application and decide whether the said document is useful to decide the controversies involved between the parties based on the pleadings already available on record. The Court below ought not to have dismissed the application filed for reception of additional evidence separately even before hearing the first appeal. Accordingly, the order passed in I.A.No.8 of 2010 is set aside with direction to consider the said application along with the main appeal based on the pleadings already available on record.

9. With these observations, the Civil Revision Petition in C.R.P.No.1566 of 2021 stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

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The learned Sub-Ordinate Judge, Sankari.

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S.SOUNTHAR, J.

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