



C.R.P.(PD).No.2029 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2024

CORAM:

THE HON'BLE MR.JUSTICE P.DHANABAL

C.R.P.(PD).No.2029 of 2022
and C.M.P.No.10391 of 2022

V.Purushothaman

... Petitioner

VS

V.Ramachandran

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order passed in I.A.No.3 of 2021 in O.S.No.376 of 2019, pending on the file of the Ist Additional District Judge, Thiruvallur.

For Petitioner : K.V.Babu

For Respondent : Mr.A.R.Suresh

ORDER

This Civil Revision Petition is filed as against the order passed in I.A.No.3 of 2021 in O.S.No.376 of 2019 on the file of the 1st Additional District Judge, Thiruvallur, wherein the respondent herein has filed a petition to include the properties by way of amending the plaint under Order 6 Rule 17 of the Code of Civil Procedure.

2. According to the petitioner herein, the respondent herein has filed a



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petition before the Trial Court stating that he is the defendant in the main suit and the petitioner herein has filed a suit for relief of partition and separate possession in respect of his 1/2 share in the schedule mentioned properties. However, wantonly omitted some of the properties owned by his father. Hence, the respondent has filed a petition to include those properties by way of amending the plaint. In fact, the 6th item of the property is belongs to wife of the petitioner/plaintiff and in respect of 7th item of the property, half of the property was already sold by his father himself. Therefore, those properties were not available for partition and petitioner/plaintiff being a *dominus litis* cannot be compelled to include the properties, which are not belongs to the joint family. But the Trial Court failed to consider the same and allowed the petition, against which the present civil revision petition has been filed by the petitioner.

3. According to the respondent herein, the petitioner is the plaintiff in the suit and he filed a suit for partition but he wantonly omitted to include the properties of his father and thereby, the respondent has filed a petition for amendment in the plaint before the Trial Court and the Trial Court also after



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considering the facts and circumstances of the case, allowed the petition.

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4. The learned counsel appearing for the petitioner would contend that the petitioner herein filed a suit for the relief of partition and separate possession as against the respondent/defendant in respect of the family properties. During the pendency of the suit, the respondent herein has filed a petition under Order 6 Rule 17 of the Code of Civil Procedure to include some other properties, which are not joint family properties, when 6th item of the property sought to be included in the suit, which was purchased by the wife of the petitioner and the 7th item of the property is belonged to the father of the respondent and he had already sold half share of the property and thereby, he opposed to allow the application. However, the Trial Court allowed the application. The petitioner/plaintiff being the *dominus litis* cannot compel to include the properties, which are not belongs to the joint family. Therefore, the order passed by the Trial Court is liable to be set aside. In support of his contention, he relied on the judgement of this Court in ***Thomai vs. Jesurai*** reported in ***2021 (3) MWN (Civil) 440*** and judgment of the High Court of Andhra Pradesh at Hyderabad in ***A.Sudershan Reddy and others vs.***



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A.Jagga Reddy and others reported in ***MANU/AP/0176/2010***

(C.R.P.No.5744 of 2008, dated 09.06.2010).

5. The learned counsel appearing for the respondent would contend that the plaintiff has suppressed the material facts and failed to include the family properties and 6th and 7th item of properties are ancestral properties. He further contended that the 6th item of property was purchased in the name of wife of the petitioner/plaintiff through joint family income and the 7th item of property is in the name of his father. Therefore, those properties have to be included as property in the suit. Therefore, he filed a petition and the same was allowed by the Trial Court. Hence, the order passed by the Trial Court is in order and the present civil revision petition is liable to be dismissed.

6. This Court heard both sides and perused all the materials available on record.



7. On perusal of records, it observed that the petitioner herein filed a suit for the relief of partition in respect of suit properties. During the pendency of the suit, the respondent herein being the defendant has filed a petition to include the petition mentioned properties alleging that those properties are also belongs to his father. The petitioner herein filed a counter objecting to include those properties on the ground that 6th item of property belongs to his wife and 7th item of property, half of the property was already sold by his father himself. Therefore, those properties are not available for partition. The petitioner/plaintiff is the *dominus litis*, therefore, the respondent/defendant cannot direct the plaintiff to include all the properties. However, the learned counsel for the respondent would contend that though the plaintiff is *dominus litis* as far as this suit is concerned, the suit is filed for the relief of partition and separate possession, therefore, all the parties have to be treated as plaintiffs, since they are having equal shares in the properties. Therefore, the defendant can file a petition for amendment to include the properties which are omitted to be included in the list of properties. It is true that as far as suit for partition is concerned all the parties i.e., share holders have to be treated as plaintiffs and the petition filed by the defendant for amendment to include



the properties is maintainable.

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8. At this juncture, the learned counsel for the petitioner relied on the judgment of the Division Bench of this Court in the case of ***Solavaiammal vs. Exhumalai Gounder (C.R.P.(PD).No.3006 of 2010, dated 16.11.2011)***, the Division Bench of this Court while answering the reference in Paragraphs 18 and 19 observed as follows:-

“18. It is argued that in the event some of the properties which are available for partition are not included in the plaint schedule, the decree would be invalid on the ground of partial partition. However, it must be kept in mind that in such event, a further suit has to be filed either at the instance of the plaintiff or defendant to include all the properties which are available for partition. In order to avoid such a situation, in partition suit, the Court could certainly entertain an application for amendment to include the properties which are left out and it cannot be said that in the event the amendment petition is dismissed, the decree would be invalid for partial partition. Hence, we hold that in a suit for partition, application for amendment at the instance of either party to the suit is maintainable under Order VI, Rule 17 of the Civil Procedure



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Code. We may also refer to the judgment of the Apex Court in Shub Karan Bubna alias Shub Karan Prasad Bubna v. Sita Saran Bubna and others, 2009 (12) Scale 259, wherein the Apex Court has observed that a decree in partition suit enures to the benefit of all the co-owners and it is sometimes said that there is really no judgment-debtor in a partition suit.

19. However, in an application for amendment, the Court has to prima facie satisfy itself as to whether the properties are available for partition or not, as a detailed adjudication on the claim is improper. If there is a dispute over the inclusion of properties by the plaintiff contending that those properties are not available for partition, the Court is certainly entitled to reject the application for amendment on that ground. In such event, the only course open to the defendant is to file a suit for partition by including those properties. As we have been called upon to answer the question as to whether the application under Order VI, Rule 17 of the Civil Procedure Code seeking for amendment of the schedule to the plaint in a partition suit at the instance of the defendant is maintainable or not, we answer the said issue by holding that while considering such an application, it is for the Court to decide on the facts of each case. The reference is answered accordingly.”



9. Therefore, on careful perusal of the said judgment, it is clear that in a suit for partition, either party can file a petition under Order VI Rule 17 of the Civil Procedure Code. However, if there is a dispute over the inclusion of properties by the plaintiff contending that those properties are not available for partition, the Court is certainly entitled to reject the application for amendment on that ground. In such event, the only course open to the defendant is to file a suit for partition by including those properties. In the case on hand also according to the petitioner, he is the plaintiff and he objected to include the properties sought to be included and thereby, the respondent/defendant can file a suit for partition by including those properties.

10. Further, the petitioner himself admitted that half of the property of 7th item is available for partition but no reference which part is available for partition. Therefore, it is for the plaintiff to file separate application to include the properties which are available for partition but since he denied half share of the property in 7th item it is not appropriate to include the property and it is for the plaintiff to decide how much and which part of the property in 7th item



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has to be included. If any property omitted by the petitioner/plaintiff, it is for the defendant to take up appropriate defence in that regard and the Trial Court has to decide the case on merits. Therefore, the order passed by the Trial Court allowing the petition for amendment to include properties which are denied by the parties is not sustainable and the same is liable to be set aside.

11. In the result:-

- (i) The Civil Revision Petition is allowed and the order passed by Trial Court in I.A.No.3 of 2021 in O.S.No.376 of 2019 is set aside.
- (ii) The application in I.A.No.3 of 2021 is dismissed.
- (iii) Consequently, the connected civil miscellaneous petition is closed. No costs.

29.04.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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Note: Issue order copy by 1st week of May, 2024.



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To

The 1st Additional District Judge,
Thiruvallur.



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P.DHANABAL, J.

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