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C.R.P. (PD) No.3484 of 202



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.09.2024

CORAM

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

**C.R.P. (PD) No.3484 of 2024
and C.M.P.No.18860 of 2024**

Mylathal

... Petitioner

Vs.

1.Ammaniammal
2.Vasanthamani
3.Balasubramaniam
4.Thenmozhi
5.Saraswathi
6.Rukumani

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 14.03.2024 made in I.A.No.4 of 2024 in O.S.No.170 of 2019 on the file of the learned Subordinate Judge, Dharapuram.

For the Petitioner : Ms.S.Vasavi Sridevi

For the Respondents : Mr.K.Sudhakar

for RR1 to 3

ORDER

The Civil Revision Petitioner is the plaintiff in the suit. She presented a suit for partition and separate possession in O.S.No.170 of 2019 on the file of the Subordinate Judge, Dharapuram.



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2. The suit is yet to see the light of the trial. At that stage, the plaintiff came to know that the extent of the property that has been given is less than the extent of the property that has been owned by the family. Apart from that, pending the suit, since the females have acquired a share in the property, by virtue of the amendment in the Hindu Succession Act, they have been impleaded as defendants 5 and 6. The plaintiff felt that this would change the fraction of the share, the plaintiff will be entitled to. Hence, she took out an application in I.A.No.4 of 2024.

3. On the change in the fraction of share, there is no dispute as is clear from the counter. The plaintiff had originally claimed $\frac{3}{9}$ th share and after impleading the defendants 5 and 6, the share would necessarily to be modified as $\frac{25}{75}$. The amendment application was resisted by the defendants 2 to 4 on the ground that by amending the plaint, four boundaries are changed and the extent of the properties are also changed.

4. The learned Trial Judge accepting the objections made by the defendants 2 to 4 dismissed the application. Hence this revision.

5. Heard, Ms.S.Vasavi Sridevi for the petitioner and Mr.K.Sudhakar
<https://www.mhc.tn.gov.in/judis>



for the respondents 1 to 3.

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6. The principle governing an amendment in a suit is that it should neither change the cause of action nor the frame of the suit. It should surprise the defendants by withdrawing an admission or circumventing the plea of limitation. In exceptional cases, the Court has the power to grant an amendment, even if it *prima facie* appears, it is barred by time. See, ***Charan Das Vs. Amir Khan, (1920) LR 47 IA 255*** and ***L.J.Leach and Co. Ltd., Vs. Jardine Skinner and Co., AIR 1957 SC 357.***

7. A perusal of the amendment shows that the suit continues to be one for partition. By granting the amendment, the suit does not change its character. With respect to the change in the share, even if the plaintiff seeks for higher share, it is the duty of the Court, after the trial, to declare what is the share that the plaintiff would be entitled to. The plaintiff may even ask for moon, but it is finally the duty of the Court to come to a conclusion whether the plaintiff is only entitled to the moon or just a fistful of sand. Therefore, the variation in the share does not matter. The burden is still on the plaintiff to prove that she is entitled for a share, she seeks for.

8. With respect to the change in the property, the suit continues to be



for partition of Survey No.561/2 of Munduvelampatti Village, Dharapuram Taluk, Tiruppur District. It is only the extent that has been changed. It is still, as pointed out by the Court, the duty of the plaintiff to prove that the family owns 4.58 acres in the said Survey Number. Being a pre-trial amendment, it requires to be treated liberally. The learned Trial Judge has erred in dismissing the amendment application by not considering the principles which applied under Order VI Rule 17 of CPC.

9. In the result, the order passed by the learned learned Subordinate Judge, Dharapuram, in I.A.No.4 of 2024 in O.S.No.170 of 2019 dated 14.03.2024 is set aside. This Civil Revision Petition stands allowed. The plaintiff is at liberty to amend the plaint as sought for. As sought for by Mr.K.Sudhakar, the defendants are always entitled to file an additional written statement by taking all the issues including those relating to valuation. No costs. Consequently, the connected miscellaneous petition is closed.

02.09.2024

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Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

Neutral citation : Yes / No



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To

The Subordinate Judge, Dharapuram.

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V.LAKSHMINARAYANAN, J.,
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