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C.R.P.Nos.1769 and 1824 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P. Nos.1769 and 1824 of 2021
and
C.M.P. No.13660 of 2021

1. B. Kamalabai W/o. Bawarlal Jain
2. P. Mahendira Kumar S/o. Bawarlal Jain

... Petitioners common
in both CRPs.

vs.

1. Prakash S/o. Sohanaraj Kawad
2. Harash Kumari W/o. Sharbat
3. Lalitha Kumari W/o. Gyanchand
4. Remila Kumari W/o. Suresh
5. Asha W/o. Vimal
6. D. Kamalabai W/o. Dharmichand Jain
7. Rajesh S/o. Dharmichand Jain
8. D. Sunil Kumar S/o. Dharmichand Jain
9. Kala W/o. Nirmal
10. Mala W/o. Rajesh
11. Suraj Bai W/o. Prakash
12. Sashi W/o. Rajesh Jain
13. Usha W/o. Sunil Kumar.

.. Respondents common in both C.R.P.s

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, Poonamalllee dated 14.02.2019 in I.A. Nos.238 and 242 of 2018 respectively in O.S. No.125 of 2015.



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For Petitioner
[both C.R.P.s.]

: Mr. Sachin Vijay

For Respondents
[both C.R.P.s]

: Mr. S.S. Rajesh [for R1]
R3 and R6 to R13 – Not served -
No appearance
R2, R4 and R5 – Not ready in notice

ORDER

These Civil Revision Petitions are filed challenging the order passed by the Trial Court dismissing the petitions filed by the revision petitioners seeking impleadment of respondents 11 to 13 and also seeking amendment of plaint respectively.

2. The 1st respondent herein filed a Suit for Partition against the petitioners and the respondents 2 to 10. The said suit was resisted by the petitioners / defendants 1 and 2 on the ground that already there was a partition in the family in the year 1980 and hence the present Suit for Partition filed by the 1st respondent was not maintainable. It was specifically claimed by the petitioners that in the family partition in the year 1980, the properties were allotted to parties and from then onwards, they have been living separately with separate business. Thereafter, the petitioners filed an



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interlocutory application in I.A No.238 of 2018 for impleading Respondents 11 to 13 and interlocutory application in I.A. No.242 of 2018 for amendment of the plaint to include certain properties in the plaint schedule. The said applications were dismissed by the Trial Court. Aggrieved by the same, the petitioners are before this Court.

3. The learned counsel for the petitioners submitted that the respondents 1, 7 and 8, out of joint family funds, purchased certain properties in the name of their wives namely R11 to R13 and therefore, the said properties should be included in the plaint schedule to make it available for partition. It is also submitted by the learned counsel that the respondents 11 to 13 had no independent source of income to purchase those properties and therefore, the properties purchased in their names should also be treated as joint family properties and the respondents 11 to 13 should also be arrayed as party defendants.

4. In the written statement filed by the 2nd petitioner herein, which was adopted by the 1st petitioner, it was specifically pleaded by the petitioners that



in the year 1980, there was an oral partition in the family and the family properties were partitioned and allotted to sharers. Therefore, the Suit filed by the 1st respondent for partition was not maintainable in view of the earlier oral partition.

5. Along with the impleading application and the petition for amendment, the petitioners also filed Sale Deeds in the name of the respondents 11 to 13 and the same were marked as Ex.P1, Ex.P.2 and Ex.P.3. The said three sale deeds are dated 12.04.1989, 30.07.1997 and 21.06.2006 respectively. Therefore, the purchase made in the name of the proposed parties namely R11 to R13 had taken place subsequent to the alleged partition as pleaded by the petitioners. Having made a specific plea in the written statement that there was a family partition in the year 1980, it is not open to the petitioners to say that even after the partition, there was joint family fund and subsequent purchase was made out of the joint family funds. The plea based on which the amendment as well as the impleading are sought for is against the original plea made by the petitioners in their written statement. The petitioners are not entitled to seek amendment of the plaint as well as the



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impleading of the parties by raising a new plea, which is mutually destructive of their original plea in the plaint. In such circumstances, the Trial Court rightly disallowed the petitions filed by the petitioners and I do not find any error in the impugned order passed by the Trial Court.

6. Hence, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

06.03.2024

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

To

The Principal District Munsif, Perambalur .



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S.SOUNTHAR, J.

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