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CRP.No.2331 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.2331 of 2021
and
CMP.No.17683 of 2021

Chitra

... Petitioner

Vs.

1.R.Laxshmi

2.R.Selvaraj

3.R.Ayyasamy

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order passed by the III Additional District Munsif, Coimbatore, dated 15.11.2017 made in I.A.No.1184/2016 in O.S.No.1026/2012.

For Petitioner : Mr.V.Rengarajan
for Ms.P.Mariyammal



CRP.No.2331 of 2021

ORDER

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This Civil Revision Petition is filed challenging the order dismissing the application filed by the petitioner to amend the plaint.

2. The petitioner filed a suit for partition claiming share (in particular 1 ½ cents) in the property described as fourth Schedule of plaint. Pending suit, the petitioner filed the instant application for amendment of the plaint. The petitioner wants to include the alternative prayer for declaration declaring the adverse title over the suit third Schedule of property. The said application has been dismissed by the trial Court on the ground that the amendment sought for by the plaintiff is inconsistent to the earlier averment found in the unamended plaint. Aggrieved by the same, the petitioner is before this Court.

3. Originally the petitioner sought for partition of fourth Schedule property and allotment of 1 ½ cents in her favour. The fourth



Schedule described in the plaint appears to be the portion of the third Schedule property. The petitioner having prayed for main relief of partition by admitting that the defendant was his sharer, is not entitled to claim adverse possession and seek declaration of her adverse title in respect of third Schedule property. The petitioner originally valued the plaint under Section 37 (2) of the Tamil Nadu Court Fees and Suit Valuation Act, on the ground that she is in joint possession of the suit property along with the defendants. Now she cannot introduce totally inconsistent plea as if she is in exclusive possession of third Schedule property, so as to claim adverse title.

4. As rightly pointed out by the trial Court, the amendment sought for by the petitioner is not only inconsistent with her earlier averment found in the plaint, but, the amendment is mutually destructive in nature. When the amendment sought for is in the nature of destroying the earlier averment found in the plaint, this Court is not inclined to entertain the same. The trial Court rightly refused the amendment sought



CRP.No.2331 of 2021

for by the petitioner as the same is inconsistent with the earlier averment raised by the petitioner in the unamended plaint. I do not find any illegality in the order passed by the Court below and accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

02.01.2024

Index : Yes / No
Internet : Yes / No

dna

To

The III Additional District Munsif, Coimbatore



WEB COPY



CRP.No.2331 of 2021

S.SOUNTHAR , J.

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