



WEB COPY



C.R.P.(PD)No.3543 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **15.10.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.3543 of 2024
and C.M.P.No.19175 of 2024

Kodi Arasi

.. Petitioner

Vs

Kuppayee Ammal (died)

1.T.Panneerselvam
2.Rangasamy
3.Periyasamy
4.Seerangan
5.Kaveri
6.Raja
7.Selvi

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 15.06.2024 in I.A.No.7 of 2024 in O.S.No.1203 of 2004 on the file of the II Additional District Munsif Court, Salem.

For Petitioner : Ms.J.Prithivi

For Respondents : No appearance



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ORDER

The civil revision petition is at the instance of the plaintiff.

O.S.No.1203 of 2004 was filed seeking for partition, declaration and several other reliefs. The trial has yet to pickup a scheme. The plaintiff had filed a proof affidavit when the 2nd defendant was set exparte. Subsequently, the said defendant moved an application to set aside the exparte order, and the same has been set aside. Therefore, the entire exercise has to be recommenced.

2. The plaintiff now has to file an additional proof affidavit, in the light of the exparte order, having been set aside as against the legal representatives of the deceased 1st defendant. In the meantime, the plaintiff came to know that one property was left out in the suit and hence, she took out an application to amend the plaint. This application was received in I.A.No.7 of 2024. After a counter was received, the learned Judge proceeded to dismiss the said application. Hence, this revision.

3. Notice to the respondents was ordered on 03.09.2024. The respondents were served but they have not entered appearance.



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4. Ms.J.Prithivi would contend that the plaintiff came to know that this property had been left out only when the matter was posted for filing of additional proof affidavit by the plaintiff. Hence, the application for amendment was taken out immediately on coming to know the said facts.

5. Heard the learned counsel for the civil revision petitioner. I have gone through the records.

6. The case is one for partition. In a partition action, in case any property of the family is left out, it can entail the dismissal of the suit for suffering from the VICE of partial partition. It is only in those circumstances that the Courts have always held that an application for amendment to include a property which has been left out can be entertained at any stage, including at the second appellate stage. In fact, if there is no dispute on the nature of the property, even during the final decree proceedings, a property can be included by way of an amendment. When such being the position of law, the order of the learned II Additional District Munsif at Salem, which is impugned before me, requires interference. This is because the learned Judge had dismissed the application only on the ground of delay. The strict rules which apply for



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amendment in case of a declaratory suit would not apply to a partition suit.

7. In the light of the above discussion, the Civil Revision Petition stands allowed. The order passed in I.A.No.7 of 2024 in O.S.No.1203 of 2004 is set aside. Leave is granted to the petitioner to amend the plaint. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

15.10.2024

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

kj

To

II Additional District Munsif, Salem.



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V. LAKSHMINARAYANAN,J.

kj

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