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C.R.P.No.3058 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.3058 of 2023 &
CMP.No.18938 of 2023

G.Solaiappan

.. Petitioner

Versus

1.G.Velrajan
2.K.Rajalakshmi
3.G.Kanagavel

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the docket order dated 09.06.2023 in I.A.No.3 of 2022 in O.S.No.9567 of 2021 on the file of the XX Additional City Civil Court, Chennai.

For Petitioner : Mr.V.Anthony Elangovan Raj
For Respondents : Mr.N.Siva Prakash

ORDER

This civil revision petition arises against the order passed by the XX Additional City Civil Court at Chennai in I.A.No.3 of 2022 in O.S.No.9567 of 2021 dated 09.06.2023.



C.R.P.No.3058 of 2023

WEB COPY

2. O.S.No.9567 of 2021 is a suit for partition and separate possession.

The plaintiffs and the sole defendant are the children of Gurusamy and Guruvathai. Gurusamy had purchased the property on 26.02.1969 and had passed away intestate on 02.09.2000. Guruvathai passed away on 03.11.2019. Therefore, the heirs, who succeeded to the estate of Gurusamy and Guruvathai, are the plaintiffs and the sole defendant. Hence, the suit for the following reliefs:

“(a) Divide the suit schedule property into four equal halves and allot 1/4th share each to the Plaintiffs;

(b) Directing the Defendant to pay the Plaintiffs the arrears of rent from October 2018 @ Rs.4,500/- per month for each shop i.e., Rs.9,000/- per month for two shops from October 2018 till December 2020 totalling Rs.2,43,000/- along with interest @ 24% p.a. from the date of the plaint till the date of realisation;

(c) Directing the Defendant to pay the Plaintiffs the arrears of rent from January 2021 to November 2021 @ Rs.12,000/- per month for two shops totaling to



WEB COPY



C.R.P.No.3058 of 2023

Rs.1,32,000/- along with interest @ 24% p.a. from the date of the Complaint till the date of realisation.”

3. The defendant was served with summons and entered appearance. He accepted the relationship between the parties. His plea was that between the death of Gurusamy and Guruvathai, the third plaintiff had executed a settlement deed in favour of the second plaintiff on 28.09.2012, whereby the third plaintiff had agreed to release his 1/5th share in favour of the second plaintiff. He also pleaded that after the death of their mother, Guruvathai, the parties had entered into an oral partition, whereby the two shop portions on the ground floor, along with three house portions on the ground floor, were allotted to the defendant. The remaining three house portions in the ground floor and the properties situated in Virudhunagar District were allotted to the first plaintiff. The second plaintiff was given 100 sovereigns of gold and the third plaintiff had relinquished his right under the oral partition. The reason for the relinquishment of the third plaintiff is that the wife of the third plaintiff had left him and since he was living all alone, he did not require any assets. In other words, the primary ground, on which the defendant sought to defeat the claim of the plaintiffs, is that the properties



C.R.P.No.3058 of 2023

are already being partitioned and therefore, the second suit for partition is not maintainable.

4. The suit is yet to see the light of trial. The plaintiffs took out an application in I.A.No.3 of 2022 seeking to amend the averments made in the plaint and to modify the prayer FROM seeking for 1/4th share for all TO 1/4th share to the first plaintiff, 9/20th share to the second plaintiff and 1/20th share to the third plaintiff.

5. In the application for amendment, the plaintiffs conceded that the third plaintiff had executed the settlement deed in favour of the second plaintiff relinquishing his 1/5th share in the suit property that came to him on the death of his father.

6. Notice was ordered to the defendant. He took time to file counter on 21.02.2023, 10.03.2023, 24.03.2023, 20.04.2023 and 09.06.2023. On none of those dates, the defendant thought it fit to file a counter. The learned Judge, being left with no other option, came to a conclusion that since counter has not been filed, the petition is allowed.



C.R.P.No.3058 of 2023

WEB COPY

7. Aggrieved by this order, the defendant is on revision before me.

8. I heard Mr.V.Anthony Elangovan Raj for the civil revision petitioner and Mr.N.Sivaprakash for the respondents/plaintiffs.

9. Mr.V.Anthony Elangovan Raj contends that the manner of disposal of the application by the learned Trial Judge is irregular. He points out that, even if counter has not been filed, the learned Judge should have assigned reasons for the same. On the merits, he pleads that there has been a suppression in the plaint about the settlement deed dated 28.09.2012 and this suppression had been pointed out by the defendant in his written statement and on account of amendment application, this defence is sought to be taken away from him.

10. Per contra Mr.N.Sivaprakash pleads that the amendment is merely clarificatory in nature, and being a pre-trial amendment, the application requires liberal construction.



C.R.P.No.3058 of 2023

WEB COPY

11. I have carefully considered the submissions of both sides and gone through the records.

12. I have to agree with Mr.V.Anthony Elangovan Raj that the manner in which the application had been disposed of leaves much to desire. The normal course I ought to have followed is to set aside the order and remand it for fresh disposal. I would have done so, had the defendant filed a shred of papers in the court opposing the amendment. In this case as pointed out above, for a period of nearly 6 months, the defendant sought for time, but did not go on record opposing the application. Perhaps, the learned Judge was under the impression that the defendant was not opposing the application and hence, allowed the same.

13. The point made by Mr.Anthony Elangovan Raj that the learned Judge should have applied her mind before allowing the application is well founded. However, considering that this is a the suit for partition between siblings, I decided to hear Mr.Anthony Elangovan Raj on the merits of his objection.



C.R.P.No.3058 of 2023

WEB COPY

14. The objection that Mr. Anthony Elangovan Raj has for the amendment being ordered is that it would take away a vital defence that has been taken by him. In addition, he pleads that the application suffers from suppression of material facts.

15. Taking the second argument first, I have to point out, the concept of suppression of material facts is relevant in a suit claiming equitable reliefs. This is because the principles, a person who comes to court seeking for equity must not only do equity but must also come with clean hands. The relief of partition is not an equitable relief, though the equity is worked out at all stages. For the mere fact that as the plaintiffs had uttered a falsehood, does not mean they stop being the legal heirs of Gurusamy and Guruvathai.

16. The suit is based on the right that has been inherited by the plaintiffs and the defendant on account of Section 8 of the Hindu Succession Act. The Court, while dealing with such a suit, is going to see whether the parties are entitled to the share. Even if the plaintiff is going to make some statements which are not true, does not mean the right which has already vested with them on the death of their parents can be divested.



C.R.P.No.3058 of 2023

WEB COPY

17. On the second point that the vital defence of the defendant has been taken away, here too I am not with Mr.V.Anthony Elangovan Raj. This is because the defence that has been taken by him is not with respect to the lack of relationship between the parties, but on the ground that subsequent to the death of Guruvathai, the parties had orally partitioned the property. By virtue of granting the amendment, the plea of oral partition is not lost. That defence is still available to the defendant. The burden is on him to prove that there has been previous partition between the family members and the second suit for partition is not maintainable.

18. I would also look at this in another angle. By virtue of execution of the settlement deed by the third plaintiff in favour of the second plaintiff, the share of the defendant has not been increased. It is the share of the second plaintiff, which has increased. If at all any body should have a grievance that the release deed have not been pleaded, it is the second plaintiff. She has no objection to the amendment being carried out nor can she have the objection because she is an applicant to the said proceedings.



C.R.P.No.3058 of 2023

WEB COPY

19. Above all, this is a pre-trial amendment. The limitations of Order VI Rule 17 proviso do not operate to such an amendment. The nature and foundation of the suit continues to be the same. By granting the amendment, the suit is no more than what it was when originally presented, namely, a suit for partition.

20. In the light of the above discussion, I am not inclined to interfere with the order, though the order of the learned Trial Judge is laconic. This civil revision petition is dismissed. It is needless to add, the defendant will be entitled to file an additional written statement for the pleas that have been incorporated by amendment.

10.12.2024

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Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no



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C.R.P.No.3058 of 2023

V.LAKSHMINARAYANAN, J.

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To

The XX Additional City Civil Court, Chennai.

C.R.P.No.3058 of 2023

10.12.2024



WEB COPY



C.R.P.No.3058 of 2023