



WEB COPY



CRP No. 3490 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2024

CORAM

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

CRP No. 3490 of 2024
and
C.M.P. No. 18899 of 2024

V.Radhika ... Petitioner

Vs.

1.K.Velusamy
2.V.Arulmurugan
3.V.Sridevi ... Respondents

PRAYER: Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 21.06.2024 made in I.A.No.7 of 2023 in O.S.No.259 of 2018 on the file of Subordinate Judge, Paramathy.

For Petitioner : Mr.S.Ramesh for
Mr.T.Balaji

For Respondents : Mr.T.Murugamanickam,
Senior Counsel for
Ms.Zeenath Begum

O R D E R

This civil revision petition arises against the order passed by the learned Subordinate Judge, Paramathy in I.A.No.7 of 2023 in O.S.No.259 of 2018



CRP No. 3490 of 2024

dated 21.06.2024.

WEB COPY

2. The civil revision petitioner is the plaintiff in the suit. O.S.No.259 of 2018 is a suit for partition and separate possession. The relationship between the parties is not in dispute. The civil revision petitioner is the daughter of the first respondent. The second and third respondents are her siblings. Pleading that the properties are ancestral properties and that she has not been given her share on account of her marriage of choice, she brought forth with a suit for partition.

3. A detailed written statement was presented by the first defendant, which was adopted by the defendants 2 and 3.

4. Pending the suit, the plaintiff filed an application in I.A.No.7 of 2023 seeking a permission of the Court to withdraw the suit and file a fresh suit on the same cause of action. The reason, that was given by the plaintiff for withdrawal of the suit, was that she came to know that there are 10 more properties belonging to the family which she did not have knowledge at the time of filing of the suit. She would further add that the first defendant had settled the joint family property in favour of her mother, Sampooram on 15.07.2020 and since these properties had been left out and Sampooram has



to be included in the array of parties, she sought to withdraw the suit.

WEB COPY

5. A detailed counter was filed by the first defendant. He would plead that there is no formal defect in the suit and therefore, the plaint ought to proceed as it stands. He would further add that the plaintiff had taken out an application in I.A.No.4 of 2023 seeking amendment to include the properties and after a counter had been presented, she withdrew the said application.

6. The learned Trial Judge considered the petition and counter and went on to dismiss the petition under Order XXIII Rule 1 of the Code of Civil Procedure. Hence, this revision.

7. I have heard Mr.Ramesh for T.Balaji for the civil revision petitioner and Mr.T.Murugamanickam for Ms.Zeenath Begum. Both the counsels reiterated the submissions they made before the Trial Court.

8. I have carefully considered the arguments and have gone through the records.

9. In order to withdraw a suit and file a fresh suit on the same cause of action, the condition precedent is that the suit must suffer from a formal



defect. Non-inclusion of joint family property in a partition suit is not a formal defect. The plaintiff can always amend the plaint to include those properties and continue with the suit.

10. Mr.T.Murugamanickam would point out that the plaintiff had filed an application for amendment and had withdrawn the same. When the presence of the joint family nucleus is admitted by the defendants, the fact that the application was filed and withdrawn would not bar the plaintiff to file a fresh application for amendment. Furthermore, the plaintiff would point out that on 15.07.2020, the first defendant had settled the property in favour of his wife (the mother of the plaintiff) by way of a registered document.

11. Being a suit for partition, I feel that at any stage of proceedings, including the second appellate stage, where the properties which are admittedly joint family properties, they can be included. The fact that the application was withdrawn does not make the properties self acquired properties of any of the defendants. Till the Court comes to a conclusion on the validity of the pleas taken by the plaintiff and the defendants, there is time enough to amend the plaint and to bring forth before the Court the properties which have been left out and to include persons, who are otherwise, interested in the properties. In fact even a *lis pendens* purchaser can be included in a



CRP No. 3490 of 2024

partition suit.

WEB COPY

12. Furthermore, being a partition suit, the cause of action arises day to day. Even today, the plaintiff could have brought forth a fresh suit for partition including all the properties. Therefore, I am not in agreement with Mr.T.Murgamanickam that by virtue of the withdrawal of application in I.A.No.4 of 2023, the plaintiff is barred from filing a fresh application to include the properties and to implead Sampooranam or such other persons in whom rights have been created pendente lite.

13. The upshot of the above discussion is that since the plaintiff has a right to file an application for amendment and to implead, there is no necessity to withdraw the suit and file a fresh suit on the same cause of action. Granting liberty to the petitioner to take appropriate steps to amend and implead, if she so desires, this civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

25.09.2024

nl

Index : Yes/No

Speaking order : Yes/No

NCC : Yes/No



CRP No. 3490 of 2024

WEB COPY

To

1. The Subordinate Judge, Paramathy.



WEB COPY



CRP No. 3490 of 2024

V.LAKSHMINARAYANAN, J.,

nl

CRP No. 3490 of 2024

25.09.2024