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CRP No3270 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2024

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THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRP.No.3270 of 2022
and
CMP.No.17360 of 2022

Mahalakshmi	...	Petitioner
1.K.M.Margabandhu		
2.Magendiran	...	Respondents

PRAYER : This civil revision petition has been filed under Article 227 of Constitution of India to set aside the order and decree dated 29.08.2022 made in I.A.No.1 of 2022 in O.S.No.267 of 2022 on the file of Sub Ordinate Judge, Katpadi, by allowing the present civil revision petition.

For Petitioner	...	Mr.A.Gouthaman
For Respondent	...	Mr.Harish
Nos.1 & 2		

ORDER

This civil revision petition has been filed to set aside the order and decree dated 29.08.2022 made in I.A.No.1 of 2022 in O.S.No.267 of 2022 on the file of Sub Ordinate Judge, Katpadi.



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2.The learned counsel appearing for the petitioner submitted that the petitioner is the plaintiff and the respondents are the defendants in O.S.No.267 of 2022. The petitioner / Plaintiff filed the suit for partition and claimed 1/3rd share in the plaint schedule properties. Pending trial, she filed the petition in I.A.No.1 of 2022 in O.S.No.267 of 2022 under Order 6 Rule 17 CPC to amend the plaint and include some more properties in the plaint schedule property for partition, which were left at the time of filing of the plaint. The respondents/defendants objected the same. After considering the argument of the parties, the learned trial Judge dismissed the petition on the ground that the petitioner failed to prove the items 3 to 7 mentioned in the petition are purchased out of the joint family income. Hence, the present civil revision petition has been filed.

3.Heard the learned counsel appearing for the respondents.

4.Admittedly, the petitioner filed a petition in I.A.No.1 of 2022 in O.S.No.267 of 2022 under Order 6 rule 17 CPC to amend the plaint and include some more properties in the plaint schedule property in the suit for



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partition, which were left at the time of filing of the plaint. While dismissing the petition in I.A.No.1 of 2022 in O.S.No.267 of 2022, the reason stated by the trial Court cannot be accepted. Whether the property has been purchased out of the joint family income or out of her own income has to be decided after letting evidence, for that, the property has to be included in the plaint. Whether it is amenable for partition or not has to be decided after recording the evidence and not in the petition stage. Order 6 Rule 17 CPC confers jurisdiction on the Court that ***“The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.”*** Therefore, the impugned order is hereby set aside and the amendment petition is allowed.

In the result, the civil revision petition is allowed. The respondents/defendants are permitted to file additional written statement with regard to the amendment and after receiving the additional written



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statement for framing proper issues, the trial Court is directed to dispose the case as early as possible since the case is pending for a long period of time. No costs. Consequently, the connected miscellaneous petition is closed.

Index : Yes/No
Internet : Yes/No
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To

23.01.2024

Sub Ordinate Court, Katpadi,



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V.SIVAGNANAM ,J.

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