



WEB COPY



C.R.P. (PD) .No.4223 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.4223 of 2022
and C.M.P.No.22140 of 2022

1.Selvaraj

Mukesh Kumar (Died)

2.Gowri

3.Sankar

4.Rajamurugan

5.D.Ravi

6.Jekkuvar

7.Kavitha

8.Minor. Harali

9.Minor. Deepali
(Minor petitioners 8 & 9 are represented
by their mother Kavitha)

.. Petitioners

Vs.

Elumalai

.. Respondent



C.R.P. (PD) .No.4223 of 2022

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order dated 17.08.2022 passed in I.A.No.1 of 2021 in O.S.No.10 of 2018 on the file of the I Additional District Judge, Tindivanam.

For Petitioners : Mr.S.N.Subramani

For Respondent : No appearance

ORDER

This Civil Revision Petition arises out of an order passed by the learned I Additional District Judge, Tindivanam, in I.A.No.1 of 2021 in O.S.No.10 of 2018 dated 17.08.2022.

2.O.S.No.10 of 2018 is a suit for partition and separate possession. The plaintiff pleads that on 21.11.2007, the plaintiffs 1 & 2, the defendant and one Veerargavan had purchased an extent of 4.37 acres. The said purchase was for the purpose of creation of a layout and selling the plots so laid out to third parties. The purchasers, namely the plaintiffs, Veeraragavan and the defendant, had laid down the properties and sold one plot to one Sivakumar. There were totally 102 plots according to the plan. With the alienation in



favour of Sivakumar, 101 plots were left out. This left out the remaining properties to be partitioned. Pending the suit, the 2nd plaintiff passed away and his legal representatives were brought on record as plaintiff Nos.7 to 10. The plaintiffs 3 to 6 are the legal representatives of Veeraragavan. As their demand for partition remained unsatisfied, they presented the suit for 2/3 share. Consequently, they presented the aforesaid suit.

3. Written statement was filed and the parties went for trial. Even in the written statement, it was pleaded that a suit for title was pending in O.S.No.466 of 2008 on the file of the District Munsif Court at Tindivanam, instituted by one Amsaveni and others.

4. At the time of drafting the plaint, the plaintiffs had shown only 3.83 acres was available for partition instead of the total extent of 5.64-1/4 cents. Realizing the mistake, an application for amendment was filed. This amendment was received as I.A.No.1 of 2021. After the receipt of the counter, the learned I Additional District Judge, Tindivanam, dismissed the application on the ground that proviso to Order VI Rule 17 of the Code of Civil Procedure



is a bar to allow the amendment and that the amendment is delayed.

WEB COPY

5. Notice was ordered in this revision on 25.01.2023 and despite the service of notice on the sole defendant, none has appeared on his behalf in this revision.

6. Heard Mr.S.N.Subramani, learned counsel for the revision petitioner. I have gone through the records.

7. The records show that there is no dispute that the plaintiffs 1 & 2, defendant and one Veeraragavan had acquired a total extent of 5.64–1/4 cents. They had also obtained a layout plan and laid out the properties. On account of the fact that the sole defendant was not willing to proceed further, the present suit came to be filed. A reading of the written statement would show that the defendant had agreed that the plaintiffs 1 & 2, defendant and Veeraragavan had purchased the property in three equal shares. Therefore, the entitlement of the plaintiffs' to 2/3rd share is not in dispute. While drafting the plaint, only an extent of 3.83 acres was given, leaving out the other portions of



the property. It is to rectify this error, an application for amendment has come to be filed. No doubt there is delay in filing the said application. Yet being a suit for partition, it cannot be presumed that the plaintiffs had abandoned their right over the same. In fact, the plaintiffs would assert that on 02.11.2007, all of them joined and had purchased the properties.

8.By allowing the amendment application, the cause of the action and the frame of the suit are not going to change. It continues to be a suit for partition. The bar under Order VI Rule 17 of Code of Civil Procedure applies when the plaintiffs' could have sought for the relief at an earlier time and did not do so. That is not a situation here. All the parties to the suit claim their right based on the sale deed dated 21.11.2007. When there is no dispute in the date of purchase, but only the extent alone requires to be amended, I am of the view that the Court could have taken a liberal approach and allowed the application. The defendant could have been compensated by way of awarding cost.

9.In the light of the above discussion, this Civil Revision Petition stands



C.R.P. (PD) .No.4223 of 2022

allowed. The order passed by the learned I Additional District Judge, Tindivanam, in I.A.No.1 of 2021 in O.S.No.10 of 2018 dated 17.08.2022 is set aside. I.A.No.1 of 2021 will stand allowed and the plaintiffs will be entitled to amend the plaint on the condition that they pay a sum of Rs.10,000/- (Rupees Ten Thousand Only) to the sole defendant within a period of four (4) weeks from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed.

24.09.2024

krk

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

The I Additional District Judge,
Tindivanam.

V.LAKSHMINARAYANAN, J.

krk



WEB COPY



C.R.P. (PD) .No.4223 of 2022

C.R.P.(PD).No.4223 of 2022

24.09.2024