



CRP No.4356 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2024

CORAM

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

CRP No.4356 of 2024
and CMP No.24260 of 2024

Sasikala

.. Petitioner

-VS-

Saroja

.. Respondent

Prayer: Petition filed under Article 227 of the Constitution of India against the order dated 12.07.2024 passed in I.A.No.7 of 2024 in O.S.No.2 of 2021 on the file of III Additional District Sessions Judge, Poonamallee.

For Petitioner : Mr.G.Vinoth

For Respondent : Mr.K.Satishkumar

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ORDER

This civil revision petition challenges the order passed by the learned III Additional District and Sessions Judge, Tiruvallur at Poonamallee in I.A.No.7 of 2024 in O.S.No.2 of 2021 dated 12.07.2024.

2. O.S.No.2 of 2021 is a suit for partition and separate possession. The plaintiff is the daughter of one Chinnammal @ Muniammal. Claiming that her mother had died intestate on 28.01.1980 leaving behind her the plaintiff and her brother Shanmugam as legal heirs, the plaintiff claims half share in the property. The defendant, who is the wife of Shanmugam, entered appearance and pleaded that there was a previous partition between the plaintiff and her husband Shanmugam. It is not in dispute that Shanmugam passed away on 07.01.2018.

3. After the pleadings were completed, before the suit could go for trial, the plaintiff filed an application for amendment. In the said



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application, she wanted to confine her relief to 2400 sq.ft. instead of 4800 sq.ft. that she had originally claimed. According to her, the property purchased by Chinnammal was 4800 sq.ft. and a portion was allotted to her maternal uncle, Janakiraman (Chinnammal's brother) to an extent of 2400 sq.ft. Since the said Chiannammal's brother is the owner of the other extent, she wanted to confine the suit only to the extent in the hand of Chinnammal after the said allotment. As the extent of the property was being restricted, consequently she wanted to change the boundaries. The learned Judge, after receipt of a counter in the said application, allowed the amendment. Hence, this revision.

4. I have heard Mr.G.Vinoth for the civil revision petitioner and Mr.Satishkumar for the respondent.

5. Mr.Vinoth submits that the plaintiff has not produced any evidence to substantiate the plea that the property had been allotted to the brother of Chinnammal, namely, Mr.Janakiraman. Further, he points out that the amendment application had been filed after the written statement has been



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presented by the defendant claiming absolute title over the property by virtue of the "WILL" executed by the defendant's husband, Shanmugam.

Hence, he argues the impugned order deserves to be revised.

6. Per contra, Mr.Satishkumar submits that it is a pre-trial amendment and therefore, the Court has taken a liberalised approach as is required in such applications and he pleads that the revision be dismissed.

7. I have carefully considered the submissions of both sides.

8. There is no dispute in the relationship between the parties. The plaintiff is the daughter of Chinnammal and the defendant is her sister-in-law (plaintiff's brother's wife). The plaintiff claims that she is entitled to a share in Chinnammal's property. The defendant seeks to defeat the claim pleading the previous partition and that on the basis of this partition, her husband had become the owner of the suit schedule mentioned property and that he had left behind a "WILL" in favour of the defendant.



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9. Whether there had been a previous partition and whether the "WILL" is true and genuine are matters which can be gone into at the time of trial. The plaintiff pleads that a portion of the entire extent of 4800 sq.ft. of the property had been allotted to her maternal uncle one Mr.Janakiraman and hence, she wants to restrict her claim with respect to the holdings that were held by her mother Chinnammal.

10. The plea of Mr.Vinoth that the plaintiff has not tendered any evidence nor substantiated the plea of allotment to Mr.Janakiraman does not appeal to me at all. This is because the Code of Civil Procedure does not expect a party to let in evidence at the time of amendment and yet again, after the plaint is amended, to go in for a full-fledged trial. Trial within a trial is unknown to the Code of Civil Procedure. There is no question of tendering evidence at the time of amendment application. Furthermore, this is a pre-trial amendment. At that stage of the proceedings, the bar under proviso to Order VI Rule 17 does not operate. Further, the defendant is not



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aggrieved by the plaintiff's reducing her claim in the property.

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In the light of the above discussion, I do not find any reason to interfere. The civil revision petition is dismissed. No costs. Consequently, C.M.P.No.24260 of 2024 is also dismissed.

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Index : Yes/No

Neutral Citation : Yes/No

sra

To

The III Additional District and Sessions Judge,
Tiruvallur at Poonamallee.



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V.LAKSHMINARAYANAN, J.

(sra)

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