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C.R.P.[NPD].No.4767 of 2024
and C.M.P.No.26698 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.12.2024

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.[NPD]No.4767 of 2024
and C.M.P.No.26698 of 2024

Krishnaveni

.. Petitioner

Vs.

Karuppathal

1.Patiyagounder

2.Ponkothai

3.Krishnakumar

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair and decretal order dated 12.04.2024 in I.A.No. 1 of 2023 in A.S.No.5 of 2020 on the file of the I Additional District Judge, Coimbatore.

For Petitioner : Mr.C.R.Prasanan

For Respondents : No Appearance



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ORDER

Challenging the impugned order, dated 12.04.2024 in I.A.No.1 of 2023, rejecting the amendment of plaint claiming enlargement of share, passed by the learned I Addl. District Judge, Coimbatore, the present Civil Revision Petition has been filed.

2. The petitioner herein is the plaintiff. She has filed a original suit in O.S.No.499 of 2015 for partition as against the defendants/respondents herein. Pending the suit, the respondents/defendants moved an application in I.A.No.1016 of 2016 under Order VII Rule 11 CPC, seeking for rejection of the plaint on the ground that there was no cause of action and the said application was allowed and the plaint was rejected. As against the order of rejection of the plaint, the petitioner preferred an appeal in A.S.No.5 of 2020, before the I Additional District Court, Coimbatore. During the pendency of the appeal, the 1st respondent/defendant in the suit, died. Therefore, the plaintiff, by way of I.A.No.1 of 2023 sought for amendment of the plaint in respect of the relief, to enlarge her share to 3/10th share in the



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plaint schedule property on the demise of the 1st respondent. The said application was dismissed on the ground that since the appeal was preferred as against the order of rejection of the plaint and unless the petitioner/plaintiff succeeds in the appeal and the suit is restored, the present application cannot be entertained and he is always entitled to seek for amendment of plaint before the trial Court in the event of allowing the appeal. Hence, the Revision.

3.Heard the learned counsel for the petitioner and perused the materials available on record.

4.Despite notice served on the respondents, none appeared for the respondents.

5.The amendment was sought for by the petitioner/plaintiff only with regard to the enlargement of the share after the death of the 1st respondent. The suit was rejected on the ground the the settlement deed already executed by the defendant and there was no cause of action. The said



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rejection order has been challenged in the appeal. Therefore, this Court is of the view that mere allowing the so-called amendment of the plaint in respect of enlargement of share, it would no way change the cause of action which was already mentioned in the plaint. Therefore, such amendment also will not cause any prejudice to the respondents. In the event the appellate Court dismisses the appeal, upholding the order of rejection of the plaint, automatically, the entire plaint even with amendment, will be summary rejected and in such event, now ordering amendment which pertains to only in respect of enlargement of share will not change the cause of action. Therefore, the finding of the Court below that amendment with regard to change of circumstances due to the death of the 1st respondent is not necessary at the stage of appeal, is not tenable and the same is liable to be set aside.

6. Accordingly, the Revision Petition is allowed. Consequently, I.A.No.1 of 2021 is allowed. The petitioner/plaintiff is directed to carry out necessary amendment within a period of 14 days from the date of receipt of a copy of this order and file amended plaint. The 1st Appellate Court shall



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dispose of the appeal in A.S.No.5 of 2020 within a period of one month from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

12.12.2024

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Index : Yes/No

Internet: Yes/No

Speaking/Non-Speaking Order

To:

The I Additional District Judge, Coimbatore.



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N.SATHISH KUMAR, J.

rst

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