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C.R.P. (PD) .No.4849 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.4849 of 2024
and C.M.P.No.27108 of 2024

1.Parvathi

2.N.Satish Kumar

3.N.Sathya

.. Petitioners

Vs.

1.Vijayalakshmi @ Vijaiya

2.Jai Balaji

3.N.Padmapriya

4.K.Ravi

5.The Proprietor,
Aircel office,
Having office at:
No.24/370, 1st Floor, G.S.T. Road,
Urapakkam, Chengalpet.

6.The Manager,
Upper Shoe Company,
Having Office at:
No.24/370, 1st Floor, G.S.T. Road,
Urapakkam, Chengalpet.

.. Respondents



Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order dated 13.12.2023 passed in I.A.No.1 of 2022 in O.S.No.417 of 2008 (CNR No.TNKP01-000287-2008) on the file of the Learned Additional District Judge, Kancheepuram at Chengalpattu.

For Petitioners : Mr.K.Boopalan

ORDER

This civil revision petition arises against the order of the learned Additional District Judge, Kancheepuram at Chengalpattu, in I.A.No.1 of 2022 in O.S.No.417 of 2008 dated 13.12.2023.

2.O.S.No.417 of 2008 is a suit for partition and separate possession of 1/5th share of each of the plaintiffs and for mesne profits.

3.The case of the plaintiffs is that the suit property belongs to one Nakkeran. He passed away on 23.01.2006. The plaintiffs plead that they came to know from defendant Nos.4 to 6 that the defendants 1 to 3 started demanding rental amounts from them. On enquiry, they came to know that the deceased Nakkeran had developed an illicit intimacy with the 1st



defendant and defendants 2 & 3 are the off springs of Nakkeran and the 1st defendant. Hence, conceding a share to the defendants 2 & 3, the suit for partition came to be filed.

4.Summons were served and the defendants entered appearance. According to them, they are the legitimate heirs of the deceased Nakkeran and on his death, the property devolved on them. Since, they are the legal heirs, they entered into tenancy agreement with the defendants 4 to 6. In addition, they pleaded that the defendants had entered partition of the properties left behind by deceased Nakkeran.

5.On the basis of these pleadings, parties were pushed to trial. Plaintiffs have completed their evidence and the 1st defendant as D.W.1 entered the witness box. On 28.02.2022, she marked Exs.B38 to B40, namely the documents under which the defendants 1 to 3 *interse* partitioned the properties among themselves. On coming to know about this fact, the plaintiffs moved an application for an amendment seeking for a declaration that the documents executed *interse* between the defendants is not binding on them.



6.The civil revision petitioners, as defendants 1 to 3, filed a counter stating that when they filed written statement in the year 2009 itself, they had pleaded that the properties have been partitioned amongst themselves and therefore, the plaintiffs have not executed due diligence. It is also pointed out that evidence in the suit had been completed and the suit is at the stage of arguments. Therefore, the application is belated.

7.The learned Trial Judge, after discussion of the affidavit and counter, came to a conclusion that the amendment deserves to be granted and allowed it. Hence, this revision at the instance of the defendants 1 to 3.

8.I heard Mr.K.Boopalan for the civil revision petitioners.

9.Mr.K.Boopalan, points out that even in the written statement, the defendants had disclosed that the properties had been *interse* partitioned between themselves. He urged the plaintiffs ought to have sought the relief even in the year 2009. Filing an amendment application in the year 2022 is hopelessly barred by time. In any event, he pleads that the plaintiffs have not



shown due diligence and therefore, they are not entitled for the amendment.

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10.I have carefully considered the submissions of Mr.K.Boopalan.

11.It is the case of the plaintiffs that when Nakkeran died on 23.01.2006, the plaintiffs and defendants 2 & 3 succeeded his estate. Once the property devolves on the legal heirs, any *interse* arrangement between the other legal heirs cannot divest the property already vested with a legal heir. To put it in other words, if the plaintiffs had succeeded to the estate of Nakkeran on his death, by virtue of the fact that the defendants 1 to 3 had entered into a partition deed, it will not divest the plaintiffs of their right over the property. In fact, the plaintiffs could have ignored the documents in Exs.B38 to B40 and proceeded with the suit. In order to avoid any technical plea, they have come forward with the amendment application.

12.With respect to the aspect of due diligence, I have to note that though the defendants pleaded, vaguely in the written statement that they have entered into a registered partition document, no details had been set forth about the document. The plaintiffs, would have come to know about the



documents, only when D.W.1 marked the same on 28.02.2022. In June, 2022, amendment application came to be filed before the Trial Court. The plaintiffs, did not wait for years on end, to file the said application. Therefore, I cannot hold that the matter of due diligence against them. In any event, in a suit for partition, a Court would necessarily have to decide as to what are the shares that the plaintiffs and defendants are entitled to receive. During the course of discussion, the Court would necessarily have to answer whether partition deed entered *interse* the defendants would affect the right of the plaintiffs. Therefore, the Trial Court had rightly granted amendment sought for.

13.Pointing out that the application came to be filed at the stage of arguments and therefore, it is only a trick to delay the proceedings, this plea of delay can be dealt with by directing the defendants to confine their additional written statement to the amendment that has been granted and that the evidence that have put forth subsequent to the amendment should be confined to Exs.B38 to B40. If this procedure is followed by the Additional District Judge, then prolonging the trial beyond its necessity would not arise.



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14. With the above directions, this Civil Revision Petition is dismissed.

Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

To

The Additional District Court,
Kancheepuram at Chengalpattu.



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V.LAKSHMINARAYANAN, J.

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