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C.R.P.No.4960 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.4960 of 2024 &
CMP.No.27924 of 2024

D.Munusami

.. Petitioner

Versus

D.Raghavan (Died)

1.Chandra

2.Ranjini

3.Ramu

4.Bharathi

5.Nirmala

Govindammal (Died)

6.Logammal

7.S.Lakshmi @ Vijayalakshmi

8.Santha

9.D.Janadhanan

10.D.Govardhanan

11.D.Swarnamugi

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 24.10.2024 passed in I.A.No.7 of 2024 in O.S.No.41 of 2005 on the file of the District Munsif Court at Sholinghur, Ranipet District.

For Petitioner : Mr.P.Manikannan



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ORDER

This civil revision petition arises at the instance of the first defendant.

2. O.S.No.41 of 2005 is a suit for partition and separate possession.

There is no dispute in the relationship between the parties. The original Plaintiff-Raghavan, first defendant-D.Munuswamy and the deceased Dhanapal are the sons of one M.C.Duraisamy Naidu.

3. It is plea of the plaintiff that his father was working in the Indian Railways. From and out of his income, he purchased the suit item 1 by way of a registered document on 14.12.1961. Insofar item Nos. 2 to 10 are concerned, he purchased the same from one Vasanthammal by way of a registered sale deed dated 13.11.1986. In the said property, he had half share in a well and three HP Motors. The plea of the plaintiff is that on the death of Duraisamy Naidu, the property devolved on all the legal heirs. Hence, he sought for partition of 1/3rd share in the suit schedule mentioned properties. Thereafter, he impleaded the wife and the daughters of M.C.Duraisamy



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Naidu (his mother and sisters) and sought 1/7th share in the suit schedule mentioned properties.

4. The first defendant entered appearance and filed a detailed written statement. According to him, the subject property of the suit devolved upon him by virtue of the “WILL” dated 09.06.1995 executed by Duraisamy Naidu in his favour. He pleaded that Duraisamy Naidu survived for three more years before execution of the “WILL” and passed away only on 13.03.1998. As Duraisamy Naidu had executed the “WILL” in his favour, the suit for partition is not maintainable.

5. On the basis of these pleadings, the parties went for trial, the evidence had been concluded, the suit was argued and it is posted for judgment.

6. At that stage, a doubt arose in the mind of the learned Trial Judge that the manner in which the schedule of property had been arranged. The court had pointed out that there was total confusion in the serial numbers in



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the schedule mentioned properties. To rectify the same, the plaintiffs filed I.A.No.7 of 2024 seeking for amending the plaint.

7. The amendment that he sought for was to correct the shares from 1/7th to 1/6th share. The other amendments were to delete the valuation and to include the new valuation. To delete the word 7 equal shares in paragraph 15a of the plaint and to renumber the Sl.Nos. given in the plaint. This application was opposed by the first defendant pleading that evidence is over and due diligence had not been exhibited by the plaintiffs.

8. The learned Trial Judge, after considering each of the heads, came to a conclusion that the amendment is necessary for the purpose of proper adjudication and hence, partly allowed the same. Hence, this revision.

9. I have heard Mr.P.ManiKannan in support of this revision.

10. Mr.P.Manikannan argues that the learned Trial Judge erred in allowing the application, since there is an utter confusion on the sl.nos. given to the suit schedule mentioned properties. He further points out that



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the suit for partition is of the year 2005 and allowing the amendment in the year 2024 is hopelessly belated. Apart from that, he adds no due diligence had been exhibited by the plaintiffs. He relies upon the judgment of the Supreme Court in *M.Revanna v. Anjanamma, (2019) 4 SCC 332* and *Basava Raj v. Indira and Others, (2024) 3 SCC 705*. Hence, he seek for revising the impugned order.

11. I have carefully considered the submissions of Mr.P.Manikannan.

12. A perusal of the plaint shows that the originally it was presented only against two persons and two items of the property. Subsequently, it was amended to include the other legal heirs of Duraisamy Naidu. These amendments had been granted and an amended plaint had been filed including the other legal heirs of Duraisamy Naidu.

13. Pending the litigation, the mother, who is a class 1 heir, passed away. It is the claim of the plaintiffs that as the mother had died intestate, 1/7th share, to which each of the legal heirs of Duraisamy Naidu succeeded including the mother, bloomed into 1/6th share. This is because the mother's



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share ought to be equally divided amongst the legal heirs of Duraisamy Naidu.

14. It is not in dispute that the mother has passed away. It is also not in dispute that the mother is a legal heir of the deceased Duraisamy Naidu. If that be the situation, by virtue of her death, the plaintiffs are entitled to bring forth the notice of the court regarding the subsequent event of her death and seek for enlargement of the share. Even without an amendment, the court, at the time of dealing with the suit for partition, is always entitled to fix a proper share that the plaintiff will be entitled to, if at all.

15. The plaintiff may ask, as in this case, $1/3^{\text{rd}}$ share and the court can always come to a conclusion that the plaintiff is not entitled to any share and dismiss the suit or come to a conclusion that $1/3^{\text{rd}}$ is not the rightful share and grant a lesser one. I have to note, the defence that has been raised by the defendants is not regarding the relationship between the parties.

16. The case of the original plaintiff is that the late Duraisamy Naidu has left behind a “WILL” in the year 1995 by which he became an absolute



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owner. If the “WILL” is proved, then the question of the plaintiff or the other defendants getting share does not arise at all. It is only in the situation that the “WILL” is not proved, then the court will be called upon to decide the appropriate share that the plaintiff and the other legal heirs of the Duraismy Naidu would be entitled to. Therefore, the substantial amendment that had been sought for by the plaintiffs to increase the shares of the legal heirs from 1/7th to 1/6th does not in any way affect the defendants.

17. With respect to the renumbering of the schedule, Mr.P.Manikannan argues that there is absolute confusion in the plaint. Therefore, it ought not to have been granted.

18. I have gone through the amended plaint, which has been enclosed in page Nos. 66 and 67 of the typed set of papers.

19. A perusal of the schedule shows that it has been numbered as 1 to 4 and then it is numbered as 2 to 5. Obviously, this is a typographical error. The items bearing No.2, 3, 4 and 5 occurring after sl.no.4 has to be necessarily corrected. This is because it is simple common sense that after



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four, the next item would have to be numbered as 5 and so on thereafter. It is this mistake committed in numbering that the plaintiff seeks to correct. Therefore, the utter confusion, which has been rightly been pointed out by Mr.P.Manikannan, has to be corrected by the plaintiffs.

20. In fact, the impugned order itself shows that the learned Judge had pointed out to the learned counsel for the plaintiffs that much is left to desire on the manner in which the items in the schedule of the property had been numbered.

21. Mr.P.Manikannan urges that by allowing the amendment, the entire character of the suit is changed. I am not in agreement with him. O.S.No.41 of 2005 was presented as a partition suit and it continues to be a partition suit, even after the amendments have been ordered. By amending Sl.Nos., the nature and the frame of the suit is not going to be changed. This is especially when there is no dispute in the identity of the properties as found out by the learned Trial Judge.



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22. Insofar as the judgment which is relied upon by Mr.P.Manikanan in *M.Revanna v. Anjanamma, (2019) 4 SCC 332* is concerned, originally the suit had been filed for partition. The suit had been decreed. On appeal, it had been set aside and remanded for fresh disposal. After remand, the plaintiff wanted to include a pleading that a prior partition that had taken place earlier deserves to be interfered with. The memorandum of partition projected by the plaintiff had been entered in the year 1972. It was only after 36 years, the application was filed to set aside the partition deed. Hence, in those circumstances, the court came to the conclusion that the amendment is not only belated, but if allowed, it changes the nature and character of the suit. I already pointed out, that is not a situation in the present case.

23. Similarly, in *Basava Raj v. Indira and Others, (2024) 3 SCC 705*, the partition suit had been presented in the year 2003. It was sought to be amended in the year 2010 seeking for the relief that a compromise decree passed on 14.10.2004 is null and void. The court held that Order XXIII Rule 3 of the Code of Civil Procedure is a bar for setting aside the compromise decree and further held that, in terms of Article 59 of the Limitation Act, the prayer should have been sought for within a period of three years.



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24. With respect to the case on hand, the plaintiffs have not changed the nature of the suit nor has they sought to amend the prayer. They have also not sought to amend the averments made in the plaint. By granting the amendment, Sl.Nos. are corrected and the shares of the properties is sought to be modified. Therefore, none of the judgments referred to by Mr.P.Manikannan applies to the facts of the case.

25. In the light of the above discussion, I do not find any merit in the revision. Accordingly, this civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no



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To

The District Munsif Court at Sholinghur, Ranipet District.



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V.LAKSHMINARAYANAN, J.

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