



C.R.P.No.513 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 29.11.2024

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Civil Revision Petition No.513 of 2020

and

C.M.P. No. 2746 of 2020

1.D. Nagamani
2.D. Rajan
3.D. Jayanthi

.. Petitioners

Versus

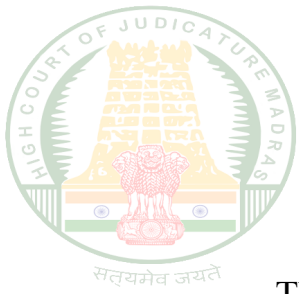
1.D. Sarathi
2.D. Shanthi
3.D. Sumathi
4.Govindan
5.Minor Boothal @ Ramajayam
Represented by Guardian ad litem
6.Vijayalakshmi
7.Amsaveni

.. Respondent

Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decretal order dated 15.11.2019 passed in I.A. No.149 of 2018 in O.S. No. 32 of 2016 on the file of the Additional District Judge, Dharmapuri.

For Petitioners : Mr. P. Valliappan
Senior Advocate
for Mr. N. Loganathan

For Respondents : Mr. J. Rajashekar



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This Civil Revision Petition had been filed seeking to set aside the fair and decretal order dated 15.11.2019 passed in I.A. No. 149 of 2018 in O.S. No.32 of 2016 on the file of the learned Additional District Judge, Dharmapuri.

2. The Revision Petitioners herein are the Plaintiffs, who have instituted the suit in O.S. No. 32 of 2016. The suit was filed for the relief of partition to divide the plaint scheduled properties into 28 equal shares and to allot 12 such shares to the Plaintiffs (4 shares for each Plaintiff); to deliver separate possession of such shares to the Plaintiffs; to grant permanent injunction restraining the Defendants from creating any kind of encumbrance over the suit properties till the partition is concluded.

3. The suit was contested by the Defendants by filing a written statement and prayed for dismissal of the suit.

4. Pending suit, the Defendants have filed application in I.A. No.149 of 2018 under Order VI, Rule 17 of Code of Civil Procedure to amend the plaint. According to the Defendants, while filing the suit, the Plaintiffs have deliberately omitted to include certain properties of late. Devaraji @ Devan and it was also pointed out in the written statement. According to the



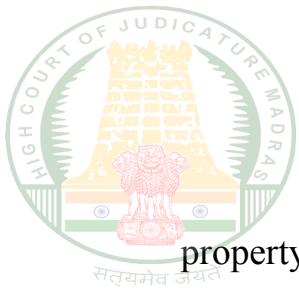
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Defendants, the deceased Devaraji @ Devan had purchased certain properties in favour of his concubine, the first Plaintiff and therefore, for an effective adjudication, the said property also has to be included in the plaint schedule. Therefore, the petition for amendment has been filed by the Defendants to include the properties which are morefully set out in the schedule of the petition in I.A. No. 149 of 2018.

5. The application for amendment was resisted by the Plaintiffs by filing counter affidavit, in which it was contended that there was no omission in including the properties of late. Devaraji @ Devan, as alleged by the Defendants. The properties which are sought to be included in the plaint is the separate property of Gayathri, Daughter of late. Chinnaraji and Wife of D.Rajan/second Plaintiff through a registered sale deed dated 20.01.2011. Similarly, the other property sought to be included belongs to the first Plaintiff who has purchased it through a registered sale deed dated 09.05.1988. The Defendants cannot seek for inclusion of those properties, which are the separate properties of the Plaintiffs. Accordingly, the Plaintiffs prayed for dismissal of I.A. No. 149 of 2018.

6. The learned Additional District Judge, Dharmapuri observed that

<https://www.mhc.trivandrum.org/> whether the properties, which are sought to be included, are the self-acquired



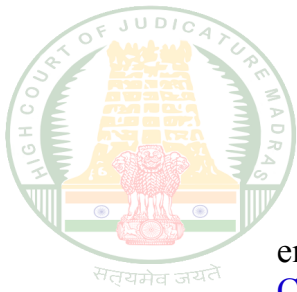
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property of the Plaintiffs or not can be decided only at the time of trial.

Accordingly, the learned Judge allowed the Petition and permitted the Defendants to amend the plaint.

7. Thiru. P. Valliappan, learned Senior Counsel appearing for the Revision Petitioners submitted that the order passed by the learned Additional District Judge, Dharmapuri, dated 15.11.2019 allowing I.A.No.149 of 2018 in O.S.No.32 of 2016, is cryptic and without any reasoning. When it was specifically contended that the properties which are sought to be included in the plaint are the self-acquired properties of the Plaintiffs through separate sale deeds, the inclusion of those properties in the plaint schedule is improper. The Plaintiffs have not omitted any of the properties, as has been alleged by the Defendants. The Plaint has been filed properly and therefore, the learned Senior Counsel prayed for allowing the present Civil Revision Petition. In support of his contention, the learned Senior Counsel for the Revision Petitioners relied on the decision of this Court in ***MANU/TN/7977/2011 [Thomai -vs- Jesuraj and others]*** wherein it has been observed as follows:

“9.The Plaintiff and the second defendant have filed their counter statements raising serious objections to the proposed amendments, that the property sought to be included is the separate and self acquired property of the second defendant and that therefore, the said property, which is not available for partition, cannot be included in the above suit. The only point to be decided is whether a party can be permitted to amend the pleadings of the opposite party?. Before



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entering into further discussion, it is necessary to refer [Order 6 Rule 17 CPC](#).

“Amendment of pleadings – The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

10. Considering the above, the provision itself is clear that the Court can permit either party to alter or amend his own pleadings and admittedly, there is no reference to the pleadings of the opposite party. But, the learned Counsel for the Respondents 1 and 3 has relied on a decision of this Court in [A.A.Ganga and another Vs. A.R.Usha and others](#) reported in 2010 (4) CTC 331, rendered by the Honourable Mr. Justice. R.S. Ramanathan. In that decision, the Hon'ble Judge has referred to the earlier decision of this court in [Ramasamy and another Vs. P.Marappan and others](#) reported in 2005 (3) MLJ 663 rendered by Hon'ble Mrs. Justice. R.Banumathi. In the judgment in [Ramasamy's](#) case, this Court has specifically held that a party cannot seek to amend the pleadings of his opponent and that since the Plaintiff is the dominus litus, he cannot be compelled to include other items of properties in the plaint schedule in a partition suit and by holding so, upheld the order of the trial Court in dismissing the amendment application. But in the judgment in [A.A. Ganga's](#) case, this Court by observing that in a partition suit, the Plaintiff is defendant and the defendant is Plaintiff and therefore, the defendant is entitled to include the property left out by the Plaintiff so as to have a complete adjudication and to avoid further litigation, set aside the order of the trial Court and allowed the amendments. Subsequently, when the very same question came up for consideration before the Honourable Mr. Justice. M. D uraisamy, in view of the conflicting views given by the two learned judges, referred for a decision by a Larger Bench and the Honourable Division Bench of this Court in [Solavaiammal Vs. Elumalai Gounder](#) reported in 2012 1 CTC 159, had held that in a suit for partition, application for amendments at the instance of either party to the suit is maintainable under [Order 6 Rule 7 CPC](#) and it is necessary to refer the relevant paragraphs hereunder;



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“19. However, in an application for amendment, the Court has to prima facie satisfy itself as to whether the properties are available for partition or not, as a detailed adjudication on the claim is improper. If there is a dispute over the inclusion of properties by the Plaintiff contending that those properties are not available for partition, the Court is certainly entitled to reject the application for amendment on that ground. In such event, the only course open to the defendant is to file a suit for partition by including those properties. As we have been called upon to answer the question as to whether the application under Order VI, Rule 17 of the Civil Procedure Code seeking for amendment of the schedule to the plaint in a partition suit at the instance of the defendant is maintainable or not, we answer the said issue by holding that while considering such an application, it is for the Court to decide on the facts of each case. The reference is answered accordingly.”

11. Considering the above, it is very much clear that a party cannot be permitted to amend the pleadings of the opposite party in all categories of suit, except in partition suit. Even in partition suit, if the nature of the property is disputed, then also amendment to include the properties at the instance of the defendant cannot be permitted. To put it in other way, if there is a contestation with regard to whether or not a particular property is partible, then even in a partition suit, amendment cannot be permitted at the bequest of the opposite party.”

8. The learned Senior Counsel for the Revision Petitioners also submitted that it is for the Plaintiffs, who seeks relief to include a property, which, to their knowledge, are liable for partition. On the other hand, the Defendants herein seek to include the self-acquired properties of the Plaintiffs, which cannot be permitted. If the Defendants require partition of such properties, which are sought to be included in the plaint schedule, they have to file a separate suit for partition or declaration to declare that the sale deeds, through which they have purchased the properties, are null and void. In the counter affidavit filed in I.A. No. 149 of 2018, the Plaintiffs have specifically

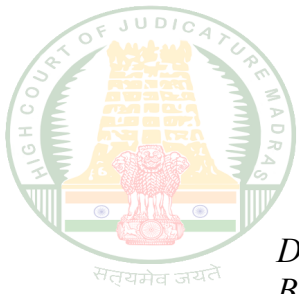


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referred to the registered sale deeds by which they have purchased those properties. While so, without filing a suit for partition or declaration, the Defendants have engineered a novel idea to seek for inclusion of those personal properties of the Plaintiffs, which cannot be permitted. The trial Court also, without any discussion, passed a cryptic order by simply stating that such disputes can be gone into at the time of trial in the suit. The learned Senior Counsel for the Revision Petitioners, therefore, prayed for allowing this Civil Revision Petition.

9. Per contra, the learned Counsel for the Respondents by way of reply vehemently objected to the line of arguments made by the learned Senior Counsel for the Petitioners and contended that in the suit for partition, the Plaintiffs will be treated as Defendants and the Defendants will be treated as Plaintiffs. He invited the attention of this Court to paragraph 15 of the written statement which reads as follows:

“15.The Plaintiffs have suppressed to implead the properties already given to the concubine of by Late.C.Devaraji @ Devan and to others in the suit. Late C.Devaraji @ Devan has purchased 1584 sq. ft. of house plot in Re.S.No.27/1A9 at B.Mallapuram Village, Pappireddipatty Taluk in the name of his concubine Nagamani on 09.05.1988 bearing Registration No.573/1988 out of the income of selling of his one portion of the ancestral property. Apart from that Late C.Devaraji @ Devan has given 0.24 Acres of land in S.No.24/1C at Pandarachetty patty Village, Pappireddipaty Taluk in favour of 2nd Plaintiff on 12.03.2007 by way of executing a registered gift deed bearing Registration No.608/2007. Similarly Late C.Devaraji @

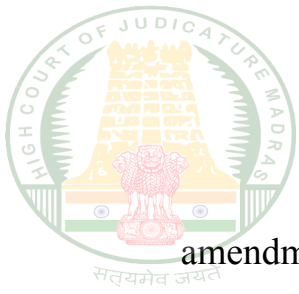


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Devan has purchased 1299 $\frac{3}{4}$ sq. ft. of vacant plot in S.No.27/1B1E at B.Mallapuram Village, Pappireddipatty Taluk in the name of second Plaintiff's wife Gayathri on 20.01.2011 bearing Registration No.174/2011. Similarly Late C.Devaraji @ Devan has purchased 1500 $\frac{3}{4}$ sq. ft. of vacant plot in S.No.27/1B1E at B.Mallapuram Village, Pappireddipatty Taluk in the name of 3rd Plaintiff on 21.01.2011 bearing Registration No.203/2011. The above facts have not been mentioned in the plaint and petition by the Plaintiffs deliberately. For non-including of these properties for division among the family members of Late C.Devaraji @ Devan by the Plaintiffs, the suit is not at all maintainable and bound to be dismissed in limine. The Plaintiffs have already been given immovable properties by Late C.Devaraji @ Devan out of his own income and they are not entitled for any share in the suit properties."

10. Thus, it is stated that the Defendants had clearly stated that the Plaintiffs had wantonly left out the properties belonging to Late C.Devaraji @ Devan which he had purchased out of the income derived from the joint family properties in the name of his concubine. The Plaintiffs have wantonly excluded those properties from the purview of the plaint. Also, the learned Counsel for the Respondents invited the attention of this Court to the counter filed in I.A. No. 149 of 2018 stating that the properties claimed as joint family property is not the joint family property, it is the separate property of Gayathiri, D/o.Late Chinnaraji & W/o. D.Rajan, second Plaintiff who had acquired it through registered sale deed dated 20.01.2011. It is the further submission of the learned Counsel for the Respondents that whether the properties, that is sought to be included, are the self-acquired property or joint family property is to be decided in the suit during trial and not at this stage. Since the Plaintiffs had not included the property the Defendants have filed the petition for



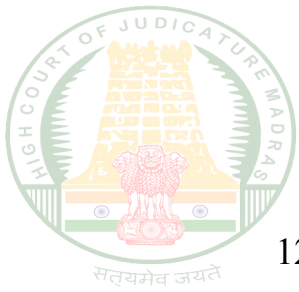
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amendment, which was rightly decided by the Trial Court. The learned Counsel for the Respondents, therefore, prayed for dismissal of this Civil Revision Petition.

Point for consideration:

Whether the order passed by the learned Additional District Judge, Dharmapuri in I.A.No.149 of 2018 in O.S.No.32 of 2016, dated 15.11.2019 is to be set aside as perverse?

11. From the order passed by the learned Additional District Judge, Dharmapuri, it is found that the learned Judge had allowed the application for amendment of the plaint to include the properties said to have been acquired by the deceased Devaraji @ Devan. In fact, it was recorded in the order dated 15.11.2019 that inspite of sufficient opportunities given to the Respondents therein, who are the Revision Petitioners, arguments have not been advanced on their behalf. It was also stated that even then, time was given to the Respondents therein to put forth their arguments before 14.11.2019. However, on 14.11.2019, arguments have not been advanced and therefore, the case was reserved for orders on 15.11.2019. Accordingly on 15.11.2019 the order was pronounced by allowing the application for amendment.

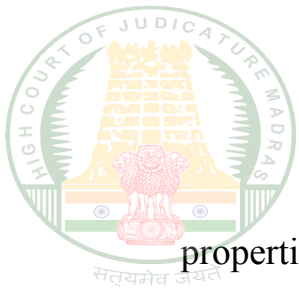


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12. The said order dated 15.11.2019 passed by the Court below is assailed in this Civil Revision Petition on the ground that the properties which are sought to be included are the self-acquired properties of the Plaintiffs. On the other hand, it was contended on behalf of the Respondents-Defendants that those properties are also to be divided equally.

13. As per the reported decision of the Division Bench of this Court, in ***Solavaiammal vs. Elumalai Gounder*** reported in ***MANU/TN/4490/2011*** a party cannot seek to amend the pleadings of his opponent. It was further held that the Plaintiff is the *dominus litus*, he cannot be compelled to include other items of properties in the plaint schedule in a partition suit at the instance of the Defendants.

14. In the present case, even though the Plaintiffs have referred to registered sale deeds by which they have independently purchased the properties, the Defendants contend that they were purchased in the name of the Plaintiffs by the deceased Devaraji @ Devan. If it is so, the Defendants cannot simply seek for amendment of the plaint and to include those properties in the plaint schedule. The Plaintiffs cannot be permitted to do so without even paying the appropriate court fee for such a relief. If the application for amendment is allowed, the Defendants will be permitted to subject the other



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properties for adjudication without even paying any court fee. Further, if the Defendants question the validity of the registered sale deed in the name of the Plaintiffs, they have to seek for appropriate relief to declare that those sale deeds are not legally enforceable.

15. As rightly pointed out by the learned Senior Counsel for the Revision Petitioners, the Defendants have engineered a novel idea and a short-cut method to simply include the properties of the Plaintiffs, which they claim to have acquired on their own, in a suit for partition filed by them. In the above scenario, the Defendants can either file a separate suit for partition of those properties or seek appropriate relief to assail the validity of the sale deeds in favour of the Plaintiffs. Further, the Defendants have to let in evidence to substantiate their plea and also to pay court fee proportionate to their claim. Thus, the contention of the Plaintiffs that the Properties are their self-acquired properties and therefore, they did not include them in the plaint schedule also required to be taken note of.

16. At this stage, the learned Counsel for the Respondents-Defendants prayed this Court to permit them to treat the Written Statement as a Counter-claim, so that they can seek appropriate relief by paying the required court fee.

<https://www.mhc.trilogi.org/dia> It was also stated by the Counsel for the Respondents-Defendants if they are



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permitted to do so, it would save the precious time of this Court. It was also stated that the application for inclusion of the properties by amending the plaint was filed in the year 2018 and five years have gone thereafter.

17. This Court find sufficient force in the submission of the learned Counsel for the Respondents-Defendants. If the Defendants are permitted to treat their written statement into that of a counter-claim, opportunity will be given to the Plaintiffs to file their counter and thereafter, both the Plaintiffs as well as Defendants can let in evidence to prove their respective claim.

18. Taking note of the above plea of the learned Counsel for the Respondents-Defendants, this Court is inclined to modify the order passed by the trial court on 15.11.2019 in I.A. No. 149 of 2018. The point for consideration is answered accordingly.

In the result, **this Civil Revision Petition is partly allowed.** The order dated 15.11.2019 passed in I.A. No. 149 of 2018 in O.S. No. 32 of 2016 is modified.

The written statement filed by the Defendants shall be treated as a Counter-Claim. The Defendants are directed to pay the necessary Court fee for the counter-claim. As and when the counter-claim is taken on record,



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opportunity shall be given to the Plaintiffs to file their reply to the counter-claim of the Respondents/Defendants and thereafter, the suit as well as the counter-claim shall be taken up for disposal on merits. No costs. Consequently, connected miscellaneous petition is closed.

29.11.2024

SRM

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

SATHI KUMAR SUKUMARA KURUP, J

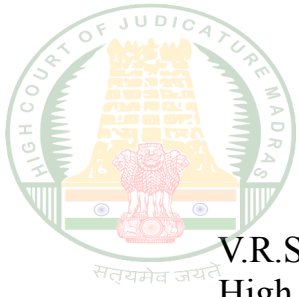
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To

1. The Additional District Court,
Dharmapuri.

2. The Section Officer,

<https://www.mhc.tril.gov.in/budse>



V.R.Section,
High Court, Madras.

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Order made in
CRP.No.513 of 2020

29.11.2024