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C.R.P.(MD)No.439 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.08.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.439 of 2021 AND
C.M.P.(MD)No.2377 of 2021

1. P.Inbavalli
2. P.Rathinasamy

... Petitioners/Petitioners/
Plaintiffs

Vs.

1. Perumal Thevar
2. Perumayee Ammal
3. P.Chandrasekaran
4. Murugan

5. The Sub Registrar,
Vathalakundu,
Nilakkottai Taluk,
Dindigul District.

... Respondents/Respondents/
Defendants

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records pertaining to the fair and decreetal order made in I.A.No.84 of 2018 in O.S.No.72 of 2016 dated 23.11.2020 on the file of the District Munsif Court, Periyakulam and set aside the same and thereby allow the revision petition.



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C.R.P.(MD)No.439 of 2021

For Petitioners : Mr.P.R.Prithiviraj
For R-5 : Mr.K.Balasubramani,
Special Government Pleader.
For R-4 : Mr.J.Vishnu
For R-1 to R-3 : No appearance.

ORDER

The plaintiffs in O.S.No.72 of 2016 on the file of the District Munsif Court, Periyakulam are the revision petitioners herein. The suit is for partition. The plaintiffs filed I.A.No.84 of 2018 for amending the plaint. Vide order dated 23.11.2020, it was dismissed. Challenging the same, this civil revision petition came to be filed.

2. The learned counsel appearing for the revision petitioner reiterated all the contentions set out in the memorandum of grounds and called upon this Court to set aside the impugned and grant relief as prayed for. The learned counsel was at pains to point out that since this is a pre-trial amendment, this Court may adopt a liberal approach.



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3. The learned counsel appearing for the contesting respondents submitted that the impugned order is well reasoned and that it does not warrant interference.

4. I carefully considered the rival contentions and went through the materials on record.

5. The partition suit was filed in June 2016. The revision petitioners are daughter and son of the defendants 1 and 2. Defendants 3 and 4 are their siblings.

6. The partition suit has been laid on the basis of the averments set out in the plaint. The petitioners wanted to amend the plaint by incorporating certain averments. According to the petitioners, on 25.03.2012 the partition agreement was entered into and that as per the terms thereof, the suit properties were allotted in favour of the second plaintiff and defendants 3 and 4 and that in lieu of thereof, defendants 1 and 2 were to be paid a sum of Rs.13 Lakhs.



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7. The Court below has noted that the plaintiffs are introducing a new cause of action and altering the character of the suit. According to the Court below, there was no justification for not making this averment when the plaint was originally filed.

8. The learned counsel for the contesting respondents submitted that the plaintiffs only want to drag on the proceedings. This may or may not be true. But then, I am satisfied that the character of the suit is sought to be altered and this is impermissible. In the guise of amending the plaint, the plaintiffs cannot alter the character of the suit. The Court below rightly dismissed the IA. Interference is not warranted. This civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

12.08.2024

Index : yes/No
Internet: Yes/No
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To:

1. The District Munsif,
Periyakulam.
2. The Sub Registrar,
Vathalakundu,
Nilakkottai Taluk,
Dindigul District.
3. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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G.R.SWAMINATHAN,J.

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