



C.R.P(MD)Nos.2415 and 2416 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 18.07.2024

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THE HONOURABLE MR JUSTICE D.BHARATHA CHAKRAVARTHY

**C.R.P(MD)Nos.2415 and 2416 of 2023
and
C.M.P(MD).No.12515 of 2023**

1.Barisa
2.Jerina

... Petitioners in both petitions

Vs.

Ayyamperumal (died)
1.Murugan
2.Senthilvel
3.Ravikumar

...Respondents in both petitions

Common Prayer : Civil Revision Petitions are filed under Article 227 of the Constitution of India, to call for the records relating to the order passed by the learned Principal Subordinate Court, Madurai, in I.A.Nos.2 and 3 of 2023 in O.S.No.555 of 2009 dated 29.06.2023 by allowing this civil revision petition and set aside the same.

In both petitions

For Petitioners	: Mr.K.Muralidharan
For Respondents	: Mr.R.G.Shankar Ganesh (for R2) Mr.V.N.Arjun (for R3) R1-died



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COMMON ORDER

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These two civil revision petitions arise out of the order dated 26.06.2023 made in I.A.Nos. 2 and 3 of 2023 in O.S.No.555 of 2009.

2. The said Interlocutory Applications were filed to re-open the evidence on the side of the plaintiffs and to recall P.W.1. The factual matrix, in which the present revisions arise, is that originally the suit in O.S.No.555 of 2009 is filed by the petitioners/ plaintiffs with the prayer to declare that the suit property shown as ABCD as a common pathway and consequently, for a relief of permanent injunction restraining the defendants. One Ayyamperumal and Murugan alone were added as the defendants. The suit was decreed by a judgment and decree dated 11.12.2017 after detail trial. The said Ayyamperumal filed A.S.No.40 of 2018, which was allowed by the VI Additional District Judge, Madurai, by holding that the trial Court ought to have marked the Advocate Commissioner's report also as a document and without marking the same as a document, the trial Court erred in relying upon the Commissioner's report and therefore, remanded the matter with the narrow campus that the Advocate Commissioner's report alone be marked as a document and once again, the matter be argued before the trial Court. When the matter was pending after remand the first defendant/ Ayyamperumal died.



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However, it was found that by a partition deed, the said Ayyamperumal had partitioned the suit properties along with his brothers and has given away the suit property, which is contended to be a pathway by the plaintiffs, to the defendants 3 and 4. Accordingly, his brothers were impleaded as the legal representatives of the first defendant. When they were impleaded, the plaintiffs also sought to amend the plaint to include the following para as:-

“XI,(a) It is submitted that the first defendant died on 23.06.2021. Prior to his death there was a partition between himself and defendants 3 and 4 under registered partition deed dated 11.03.2014. In the said partition, though suit property does not belong to defendants 1, 3, 4 the suit property was included by giving wrong boundaries to the share of third and fourth defendants. The photo copy of the registered partition deed dated 11.03.2014 is herewith produced as document.”

The above was allowed to be included in the plaint by way of an amendment application.

3. Thereafter, in tune with the amended para XI.(a), the plaintiffs filed these applications stating that to the limited extent of letting in evidence in support of the newly amended para XI.(a), the plaintiffs' side evidence should be re-opened and P.W.1 should be recalled. The said applications are now



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rejected by the trial Court on the ground that when the suit was decreed earlier and remanded by the Appellate Court, the scope of remand was in a narrow campus and except what is directed by the Appellate Court, the trial Court is not entitled to do and therefore, only the Commissioner's report alone can be marked and the suit can be reconsidered. Aggrieved by the same, the present civil revision petitions are filed.

4. The learned counsel appearing on behalf of the petitioners would submit that it is true that the remand was within a narrow scope only. But, however, it can be seen that when pending the suit by way of a subsequent developments, the first defendant has died and the defendants 3 and 4 are brought on record, since they are now claiming right over the property through the partition deed between themselves and the first defendant, amendment in the plaint was necessitated and accordingly, the earlier amendment application was also allowed. When the amendment application is already allowed, it goes without saying that in view of the subsequent development to the limited extent the plaintiffs should be allowed to let in further evidence.

5. Per Contra, the learned counsel appearing on behalf of the third respondent would submit that the trial Court has to strictly go only as per the



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scope of remand. In support of his submission, he would rely upon the judgment of a co-ordinate Single Bench of this Court in ***Amaravathi and others Versus Sankaranarayanan and others*** reported in **2018 (5) CTC 364**, more specifically relying upon paragraphs 36 and 40 to contend that the trial Court cannot go beyond the scope of remand. The learned counsel would also further rely upon the judgment of the Honourable Supreme Court of India in ***K.K.Velusamy Versus N.Palanisami*** reported in **2011 (3) CTC 422** to press home the proposition that the inherent power of the trial Court contained in Section 151 of the Code, cannot be treated as a carte blanche to grant any relief and these applications, which are filed in a routine manner, cannot be ordered without application of mind and when the trial Court has applied its mind and rightly rejected the petitions and this Court need not interfere with the same.

6. Mr.R.G.Shankar Ganesh, learned counsel appearing for the second respondent would also submit that it is not the case as if the respondents said no objection. The scope of the remand itself was only to mark the Advocate Commissioner's report. Therefore, at this belated stage, no evidence cannot be let in.



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7. I have considered the rival submissions made on either side and perused the materials record of the case.

8. At the outset, there can be no dispute over the proposition as argued by the learned counsel for the respondents that when the matter is remanded by the Appellate Court, the trial Court has to strictly go by the scope of the remand and cannot enlarge the scope and decide the suit and cannot re-open the other aspects of the suit. But, however, it can be seen that pending the suit, the first defendant died. The defendants 3 and 4 have already been impleaded as the legal representatives pending remand. Pursuant thereof, an amendment application has been filed and para XI.(a) has been included in the plaint. Therefore, when the subsequent events have taken place, the same necessitated to determine whether the defendants 3 and 4, who are claiming through the first defendant and claiming through the partition deed, can claim any right in respect of the property or not and if the same is not determined, the same will not amount to complete and correct determination of the *lis* between the parties.

9. In view thereof, when the said facts were not available at the time of remand and when the subsequent events have taken place and when the respondents have not also objected to the amendment and the impleadment, it is



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just and necessary that in view of the newly amended paragraph XI.(a), the plaintiffs should be permitted to let in such evidence. It is made clear that an additional evidence if any to be let in through P.W.1 shall strictly be with reference to paragraph XI.(a) alone and not with reference to any other matter for which already the parties have let in evidence. In view of such new evidence, which is being let in by P.W.1, if any contra evidence have to be let in by the other side also with reference to the limited scope of paragraph XI.(a), it will be open for the respondents' side also to let in evidence and the no objection submitted by the learned counsel for the petitioners for the same is also recorded. It will be just and necessary that they should also be given an opportunity.

10. In view thereof, these Civil Revision Petitions are disposed of on the following terms:-

(i)The order dated 26.06.2023 made in I.A.Nos.2 and 3 of 2023 in O.S.No.555 of 2009 shall stand set aside and the said Interlocutory Applications shall stand allowed.

(ii)The plaintiffs will be entitled to lead evidence through P.W.1 in respect of para XI.(a) alone and the plaintiffs shall complete their side evidence as soon as possible and if at all, the



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respondents are willing, they will also be given an opportunity to let in additional evidence, if any, with reference to para XI.(a) of the plaint and the additional evidence, which let in by the plaintiffs at this stage.

(iii)The trial Court, even though the Advocate Commissioner's report has already been marked as directed earlier by the Lower Appellate Court, uninfluenced by any of the findings of the judgment in the earlier round or the order of this Court, shall dispassionately consider the evidence on record in respect of all the issues and determine the suit afresh in accordance with law.

(iv)The entire exercise shall be carried on within a period of four months from the date of receipt of the copy of the order.

No costs. Consequently, connected Miscellaneous Petition is closed.

18.07.2024

NCC:Yes/No

Index:Yes/No

Rmk

To

The Principal Subordinate Judge, Madurai.



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Rmk

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