



C.R.P.(PD)No.3262 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **06.01.2025**

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CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.3262 of 2016
and C.M.P.No.16567 of 2016

1.Ravi

2.Pushpalatha

.. Petitioners

Vs

Subbu Udaiyar (died)

1.Nanni Udaiyar (Died)

2.Kandasamy

Dhanakodi (died)

3.Sellammal

4.Valliyammal

5.Thangammal

6.Ganesan

7.Selvarani

8.Subramani

.. Respondents

(1st Respondent died. Respondents 6 to 8 brought on record as legal heirs of the deceased 1st respondent viz. Nanni Udaiyar vide Court order dated 26.06.2023 made in C.M.P.No.1581 of 2022 in C.R.P.No.3262 of 2016 by KGTJ)



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PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 19.08.2016 made in I.A.No.616 of 2016 in O.S.No.102 of 2009 on the file of the learned Subordinate Judge at Attur.

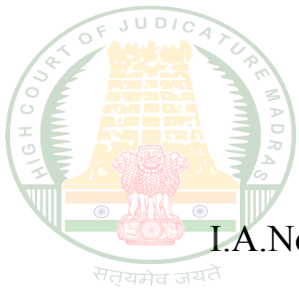
For Petitioners : Mr.P.Jagadeesan
For R2 : Mr.V.Meenakshi Sundaram
For R4 & R5 : No appearance

ORDER

This civil revision petition arises against the order of the learned Subordinate Judge at Attur in I.A.No.616 of 2016 in O.S.No.102 of 2009 dated 19.08.2016.

2. The plaintiffs are the civil revision petitioners. For the disposal of this revision, I need not delve deep into the facts which lead the plaintiffs to present the suit. Suffice it to state that O.S.No.102 of 2009 is a suit for partition and separate possession. The defendants had entered appearance and had filed a written statement.

3. Before the suit could be taken up for trial, the plaintiffs filed



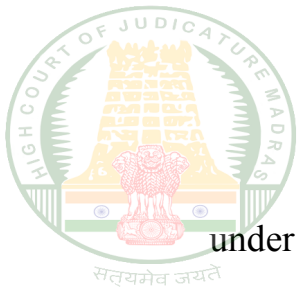
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I.A.No.616 of 2016 seeking to amend the plaint. Their plea was that certain properties had been left in the plaint and they wanted to include those properties by way of the amendment. Notice was ordered to the defendants. The defendants did not file a counter. The learned Trial Judge took up the application for disposal. After hearing both sides, she held as the plaintiffs have not proved, by way of documentary evidence, that the properties sought to be included are liable to be partitioned, the amendment cannot be granted. She dismissed the petition.

4. Aggrieved by the order of dismissal, the plaintiffs are on revision before me.

5. Notice was ordered by this Court on 19.10.2016. Though the respondents/defendants have been served, there is no appearance on their behalf.

6. When the matter was taken up on 27.11.2024, Mr.P.Jagadeesan represented that the suit had been dismissed for default on 07.09.2022 and an application had been filed to condone the delay in filing the application to restore the suit along with an application to restore the suit



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under Order IX Rule 9 of C.P.C. Hence, in order to give an opportunity, I adjourned the matter to today. By an order dated 27.11.2024, I requested the learned Subordinate Judge at Attur to dispose of the application filed to condone the delay.

7. When the matter was taken up today, Mr.P.Jagadeesan represented that the learned Trial Judge has allowed the application to condone the delay on 03.01.2025 on condition that a sum of Rs.3,000/- be paid as cost. He adds the cost has also been received by the defendants and the application has been allowed. Hence, I am disposing the revision.

8. The suit is one for partition. It has not yet seen the light of the trial. Pre-trial amendments should be construed liberally. The law is well settled. There is no question of adducing proof on the merits of the plea at the time of dealing with an amendment application. I am unaware of the trial being conducted by a Court at the time of dealing with an amendment application and another, to deal with the merits of the suit.

9. The plaintiff has asserted in I.A.No.616 of 2016 that they have right over the properties, which have left out. This plea of the plaintiff



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has not been opposed by the defendant. In a suit for partition, if either a party is left out or if the properties are left out, the suit faces the danger of being dismissed for non-joinder of necessary parties or for partial partition. The demand of the learned Trial Judge that the plaintiff had to adduce evidence, in order to substantiate the case even at the time of considering the amendment application, does not pass muster.

10. In the light of the above discussions, the Civil Revision Petition succeeds. The order in I.A.No.616 of 2016 in O.S.No.102 of 2009 dated 19.08.2016 is set aside. Leave is granted to the plaintiffs to amend the plaint. No costs. Consequently, connected miscellaneous petition is closed.

06.01.2025

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation : Yes/No

kj

V. LAKSHMINARAYANAN,J.



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Kj

To

The Subordinate Judge at Attur.

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