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CRP(PD).No.1998 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

CRP.(PD).No.1998 of 2022

and

C.M.P.No.10271 of 2022

Renuka

... Petitioner

Vs.

1.Sangeetha @ Kalaiyarasi

2.Tamilarasi

3.Baranidaran

(Mentally challenged rep. by 1st respondent, Mother and Natural Guardian)

Padmavathy (Died)

4.Sakthivel

5.Vedhanayagam

6.Bakthvachalam

... Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order dated 12.04.2022 in IA.No.507 of 2017 in OS.No.51 of 2011 on the file of the learned Subordinate Judge, Tirupattur



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CRP(PD).No.1998 of 2022



For Petitioner : M/s.M.Sivavarthanan
For Respondent : M/s.N.Subbarayalu for R.1
: M/s. P.VAsanth for R.4 to R6.
: R.2 – Not ready in notice
: R.3 – Mentally challenged,
rep. by R.1.

ORDER

The plaintiff is the revision petitioner before this Court challenging the order passed by the learned Subordinate Judge, Tirupattur, allowing the application filed in I.A.No.507 of 2017 in O.S.No.51 of 2011 in and by which the learned Judge had permitted an amendment to the plaint at the behest of the defendants.

2. The short facts which have led to the filing of this Civil Revision Petition are hereinbelow set out and the parties are referred to in the same ranking as before the Trial Court.

3. The plaintiff had filed the above-referred suit for partition and separate possession of her 5/16th share in the suit schedule property.



The 1st defendant is the mother of the plaintiff, the 2nd defendant is her sister and the 3rd defendant is her brother.

4. It is the case of the plaintiff that the suit schedule property belonged to her paternal grand father one M.C. Parasurama Chettiar as his ancestral property. On 19.08.1958, a registered partition deed was entered into between Parasurama Chettiar, his wife Pushpaammal @ Krishnammal sons of Chinnaya Chettiyar, Balakrishana and minor Raman @ Ramakrishanan in respect of the suit property and all other properties. Under this partition deed, the A schedule property was allotted to Parasurama Chettiar, B schedule property to his wife, C schedule to his son Chinnaya Chettiyar, D schedule to Balakrishana and E schedule to Raman @ Ramakrishanan who is none else than the father of the plaintiff and defendants 2 and 3 and husband of the 1st defendant.

5. The plaintiff would contend that some of the lands which were allotted to her father had been acquired under the Land Ceiling Proceedings and some were sold by him. Thereafter, the remaining



properties were being enjoyed jointly as a Hindu Undivided Family property even during the lifetime of her father. Her father died on 04.11.1987. The property therefore devolved on the plaintiff and defendants 1 to 3. The plaintiff would submit that defendants 1 to 3 had attempted to sell a portion of the property to the 4th defendant and she has been made a party to the proceedings. Pending the suit, the 4th defendant had passed away, leaving behind her surviving the 5th defendant her husband and defendants 6 and 7 her sons. The plaintiff would submit that she has been making repeated requests to the defendants to partition the property. However, since they had not come forward to do so, she has instituted the above suit for partition.

6. A written statement was filed by the 1st defendant for herself and on behalf of the 3rd respondent (mentally challenged). The 1st defendant had more or less adopted the pleadings of the plaintiff and would contend that the 2nd defendant had married one Suresh against the wishes of her parents and during the Land Ceiling Proceedings in order to protect the properties, her husband Raman @ Ramakrishnan had obtained patta in the name of the plaintiff and the defendants but



however the property continued to be enjoyed by the said Raman.

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7. While so, the 2nd defendant, taking advantage of the fact that patta in respect of S.No.287/1 measuring an extent of 1.12 ^{1/2} acres and S.No.282/2 measuring an extent of 2.38 ^{1/2} acres stood in her name, had sold the property to the 4th defendant under a sale deed dated 20.10.1999. Ultimately, they had also sought for partition of the property.

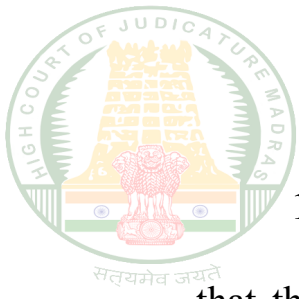
8. The 2nd defendant had filed a written statement inter alia contending that her marriage to a person of a lower caste had irked her family members and she was not accepted by the family. She would submit that she and her family have been in possession and enjoyment of the lands allotted to her by her father. After her father's demise, her mother, the 1st defendant and her paternal uncle Balakrishnan were giving her constant trouble. In order to meet urgent family needs, she had sold the property which had been given to her by her father to the 4th defendant. She would further plead for a partial partition stating that the two properties given to the plaintiff were purchased using



joint family income but have not been included in the schedule of properties. She would further submit that the cash which belonged to her father was taken away by the plaintiff. She would further submit that earlier suits filed by the plaintiff as well as the 1st defendant had been dismissed and this suit is yet another in that series. She would therefore pray for a dismissal of the above suit.

9. The 5th defendant had also filed a written statement denying the allegations contained in the plaint and prayed for the dismissal of the suit.

10. After the evidence of P.W.1, the 2nd defendant had come forward to file I.A.No.507 of 2017 to amend the plaint by including two properties to the schedule of properties. She would seek to have these properties included in the schedule of properties by stating that these properties also belonged to the joint family as it has been purchased by her father from out of the income of the joint family properties.



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11. The plaintiff had resisted the said application by contending that the two properties are not the joint family properties. The First Item of property was purchased by her husband and the Second Item of the property had been settled on her and therefore both the properties are not the joint family properties and the amendment should be dismissed.

12. The learned Trial Judge, however, overlooking the objections of the plaintiff, had proceeded to allow the application by contending that the nature of the property has to be considered only at the time of Trial and not in the interlocutory stage. Further, by amending the plaint a multiplicity of proceedings can be avoided. Challenging the same, the plaintiff is before this Court.

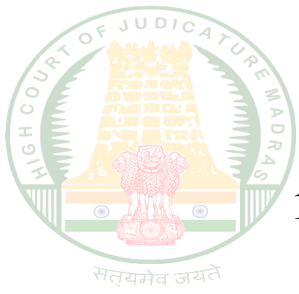
13. Mr. Sivavarthan, the learned counsel for the petitioner, would submit that the properties in question do not belong to the joint family. The First item of the property which is sought to be included in the schedule of properties had been purchased by the husband of the plaintiff under a registered sale deed dated 10.07.2005 from one



T.K.Narasimhan. The Second Item of the property which is sought to be included in the schedule of properties belonged to her mother and was her exclusive property which she had settled on the plaintiff under a settlement deed dated 05.02.2007.

14. He would further submit that the defendant cannot seek to amend the plaint in a partition suit and would rely on the judgment of the Division Bench of this Court reported in **2011 5 LW 859 – Solavaiammal and Others Vs. Exhumalai Gounder and another.**

15. The learned counsel for the respondent on the contrary would submit that though the properties have been purchased in the name of the petitioner's husband, the source of funds was the joint family income. Even the property which was stood in the name of the 1st defendant and which was settled in favour of the plaintiff also had its source of income from the joint family properties. Therefore, he would submit that the learned Trial Judge has rightly allowed the amendment application.



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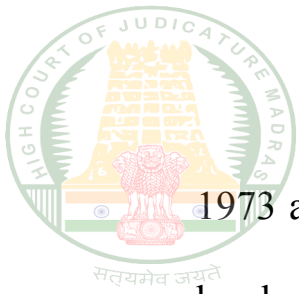
16. Heard the counsels on either side and perused the records.

17. The two points that have to be considered by this Court in order to appreciate the correctness of otherwise of the order passed by the learned Judge, Tripattur are:-

(i) Whether the two properties which are now sought to be included would partake the character of the joint family property.

(ii) Whether a defendant in a suit for partition can be permitted to amend the plaint.

18. As regards the first point in question, the case of the defendant is that these two properties have been purchased by the father. A perusal of the sale deed dated 10.07.2005 under which the petitioner's husband had purchased the property would show that the property was purchased on 10.07.2005. The father of the plaintiff and the 2nd defendant had died on 04.11.1987. Therefore, on that very basis the defendant's contention that it was purchased by the father fails. The recitals in that sale deed would indicate that the property belonged to one Rukmani who had purchased the property in the year

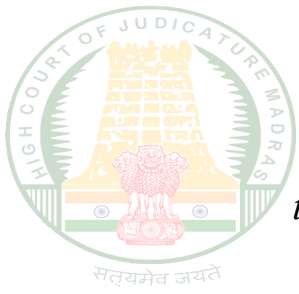


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1973 and on her demise as her legal heirs succeeding to the property, her husband T.K.Narasimhan had sold the property to the plaintiff's, husband Perumal. The 2nd document, namely, the settlement deed dated 05.02.2007 under which the 1st defendant/mother had settled the property situate at Yelagiri in favour of the plaintiff would clearly show that the property is not the property of the plaintiff's father but is the property of the mother, a Hindu female. She has executed the settlement deed in favour of the plaintiff. Therefore, both these properties do not partake the character of a joint family property and cannot be included in the partition suit as the partition has been sought with reference to the ancestral properties of the plaintiff, the 2nd defendant and the 3rd defendant's father Raman.

19. Coming to the 2nd issue on the competence of a defendant to file an amendment in a partition suit. In this regard, the learned counsel for the petitioner had relied upon the judgment of the Hon'ble Supreme Court cited supra. The Bench after discussing the various judgments on this point, had observed as follows:-

“15. Keeping the above principles in mind,



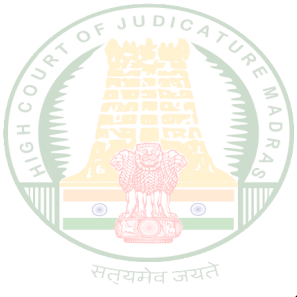
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CRP(PD).No.1998 of 2022



the question raised in this civil revision petition is to be considered. Though a plain reading of Order VI, Rule 17 of the Code of Civil Procedure would appear that only a party to the plaint or written statement, as the case may be, could seek for amendment on the ground that such a party would be the dominant litus, it will be only a general rule in respect of all suits barring a suit for partition. In terms of Order VI, Rule 17, only the respective party to the pleadings could seek for amendment, as they are referred to as the plaintiff or defendant, as the case may be. In a partition suit, both the plaintiff and defendant are considered to be on the same pedestal to seek for a decree. This distinction is made by Courts. The application of Order VI, Rule 17 insofar as partition suits shall be considered keeping the above in mind.”

20. Ultimately, they have held as follows:-

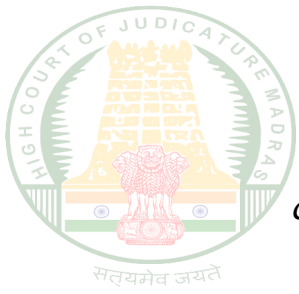


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CRP(PD).No.1998 of 2022



“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

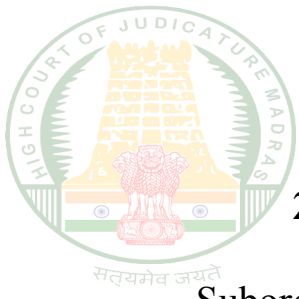


case. The reference is answered accordingly.

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21. In fact, the Bench was answering a question as to whether the provisions of Order 6 Rule 17 of the CPC, amendment of the plaint in a partition suit, can be allowed at the instance of the defendant. They had ultimately held that if the plaintiff objected to the inclusion of the properties stating that they are not available for partition, the Court could reject the application. Then, the only recourse available to the defendant is to file a separate suit for partition by including the property. Therefore, they have answered the question by stating that it is for the Court to decide on a case to case basis.

22. In the instant case, the plaintiff has objected to the inclusion of the properties by stating that the same are not available for partition as they are not the properties of the Hindu Undivided Family nor ancestral properties but are the self-acquired properties of the plaintiff's husband and the 1st defendant/mother.



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23. In the above circumstances, the order passed by the learned Subordinate Judge, Tirupattur that this issue can be gone into only during trial cannot be countenanced and the order allowing the amendment has to necessarily be set aside.

24. Accordingly, the Civil Revision Petition is allowed and the order passed by the learned Subordinate Judge, Tirupattur in I.A.No.507 of 2017 in OS.No.51 of 2011 is set aside. No costs. Consequently, the connected Miscellaneous Petition is closed.

04.03.2025

(shr)

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No

To

1.The Subordinate Judge, Tirupattur



WEB COPY



CRP(PD).No.1998 of 2022

P.T. ASHA. J.,

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