

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 09-11-2010

CORAM:

THE HONOURABLE MR. JUSTICE V. RAMASUBRAMANIAN

CRP (PD) (MD) No. 2240 of 2010

And MP (MD) No 1 of 2010

1. Muniappa Gounder
2. Chellampaha Gounder
3. Nalleppan
4. Subramanian
5. Ganapathy
6. Malayappan, S/o. Muniyappa Gounder

Petitioners

1. Malayappan, S/o. Palaru Gounder
2. Jayalakshmi
3. Palaru Gounder
4. Kandasamy
5. Susunniassa
6. Velusamy
7. Mani
8. Rajamani
9. Kanakarathinam
10. Ramethal & Kannammal
11. Palanisamy

Respondents



This Civil Revision Petition filed under Article 227 of the Constitution of India, preferred against the order and decretal order dated 27.7.2010 passed in I.A.No.265 of 2010 in O.S.No.278 of 2004 on the file of the Court of Additional District Judge, East Track Court at Dindigul.

For Petitioners

For Respondents-1&2

: Mrs. Vijayakumari Natarajan

: Mr. S. R. Swaminathan

**ORDER**

This Civil Revision Petition arises out of an order passed by the Trial Court, allowing an application taken out by the defendants 2 and 3 for the amendment of the plaint schedule.

2. Heard Mrs. Vijayakumari Natarajan, learned counsel appearing for the petitioners and Mr. G.R. Swaminathan, learned counsel appearing for the respondents 1 and 2, out of whose application alone, the present Civil Revision Petition has arisen. Therefore, notice to the other respondents is unnecessary and consequently dispensed with.

3. The petitioners herein joined together and filed a suit in O.S.No.278 of 2004 on the file of the District Court, Dindigul (now pending on the file of the Fast Track Court, Dindigul), seeking partition and separate possession of their 4/5 share in the suit schedule properties. The suit schedule comprised of about 24 items of properties.

4. The defendants 2 and 3 in the suit took out an application in I.A.No.265 of 2010 under Order VI, Rule 17, CPC, for amendment of the plaint, so as to include 5 more items of properties to the plaint schedule so that the plaint schedule comprises of a total of 32 items of properties. Carried away by the generosity to the defendants 2 and 3 in adding to the list of properties for partition, the Court below allowed the application for amendment by order dated 27.7.2010, overlooking the futility of the whole exercise. Therefore, the plaintiffs are before this Court.

5. At the outset, the respondents 1 and 2, who are the defendants 2 and 3 in the suit, who sought the amendment of the plaint schedule, were actually opposing the claim for partition. According to the respondents 1 and 2, the petitioners herein plaintiffs are not entitled to seek partition of the suit items 1 to 8. Consequently, the respondents 1 and 2 herein, are not seeking any partition of any share for themselves either in the original list of properties included in the plaint schedule or in the additional list of properties now sought to be included by way of amendment. The only purpose for which the respondents 1 and 2 want some more items of properties to be included in the plaint schedule is to ultimately request the Court to hold that the plaintiffs are not entitled to partition both in respect of the first list of 24 items and also in respect of the additional list of 8 items.

6. The respondents 1 and 2 need not ask for a decree of dismissal of the suit in respect of any additional items of properties. The very fact that the petitioners have not chosen to seek partition in respect of any other items would show that they are not staking a claim for partition against those items.

7. Actually it appears that the respondents 1 and 2 want to include some properties which are in exclusive possession and enjoyment of the petitioners. But by taking recourse to an application for amendment of the plaint schedule, the respondents 1 and 2 cannot achieve anything. The respondents 1 and 2 have not filed either a suit for partition or they have filed items of properties which they now seek to include nor they have filed any counter claim in the very same suit for partition. Therefore, their request for amendment of the plaint schedule, when the plaint contains no prayer in respect of those properties and their written statement also contains no prayer in respect of those properties, is wholly unjustified and unnecessary.

B. In view of the above, the Civil Revision Petition is allowed, the signed orders are set aside and the amendment application filed by the respondents 1 and 2, shall stand dismissed. No costs. Consequently connected miscellaneous petition is also dismissed.

SD  
ASST REGISTRAR ( CO )

/TRUE COPY/

SUB ASST REGISTRAR

Syn

To::

The Additional District Judge/ Fast Track Court at Dindigul.

LCC TO MR. G.R. SWAMINATHAN, ADVOCATE, SR: 45272;  
LCC TO MR.S. NATARAJAN, ADVOCATE, SR: 45045;

DM::2010::NOVEMBER:24:

3P:4C::

CRP (PD) (MD) No. 2240 of 2010

09-11-2010

