

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).19196/2012

(From the judgement and order dated 23/09/2011 in CRP No.1715/2011 of The HIGH COURT OF MADRAS)

CHELLAMMAL & ORS.

Petitioner(s)

VERSUS

G.MALAYAPPASAMY & ORS.

Respondent(s)

(With prayer for interim relief and office report)

Date: 23/08/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Petitioner(s)

Mr. G. Ananda Selvam, Adv.
Mr. K. Manjit Ssmj, Adv.
Mr. Ravindra Keshavrao Adsure, Adv.

For Respondent(s)

Mr. S. Nandakumar, Adv.
Mr. R. Satish Kumar, Adv.
Mr. Parivesh Singh, Adv.
Mr. Satheesh Mohanan, Adv.
Mr. M. Muthu Vel Palani, Adv.
Mr. V.N. Raghupathy, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

[Usha Bhardwaj]
A.R-cum-P.S.

[Phoolan Wati Arora]
Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7110 OF 2013
(Arising out of S.L.P. (Civil) No.19196 of 2012

Versus

G. Malayappasamy & Ors.

..Respondent(s)

O R D E R

Leave granted.

This is an appeal, the filing of which could have been avoided if the learned Single Judge of the Madras High Court who decided CRP (PD) No.1715 of 2011 and M.P.No.1 of 2011 filed by respondent Nos. 1 to 4 had taken the trouble of keeping in mind the parameters laid down by this Court and the High Courts for exercise of power under Article 227 of the Constitution and to analyse the reasons recorded by the trial Court for entertaining and allowing the prayer made by the appellants for amendment of the plaint.

The appellants filed suit (O.S. No.137 of 2008) for partition claiming share in the suit schedule property. After filing of the written statement by respondent No.1, which was adopted by respondent Nos. 2 to 4, the appellants filed an application under Order VI Rule 17 CPC for amendment of the plaint claiming half share in the suit property. They did so by relying upon the amendment made in the Hindu Succession Act in 2005. Respondent Nos. 1 to 3 contested the application by asserting that the amendment would change the nature of

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the case.

After considering the arguments of the counsel for the parties and the record, the trial Court granted leave to the appellants to amend the plaint by recording the following reasons:

"Admittedly the above suit has been filed for petition stating that 1/2 of the suit properties are ancestral and remaining 1/2 of the properties are self acquired properties of the father of the petitioners namely Govindasamy Gounder.

Now the petitioners has filed this petition seeking change of share of the petitioners in the plaint stating that, by virtue of the Hindu Succession Amendment Act, 2005, the petitioners have also become coparceners along with male members and as such they are entitled for enhanced share in the ancestral properties of Govindasamy Gounder. Whether the entire suit properties are ancestral properties or whether 1/2 of the properties are ancestral and remaining 1/2 of the properties are self acquired properties are all the mixed question of law and facts and the same can be decided only after the trial and cannot be decided in the application. The question whether the petitioners are entitled to enhanced share in the ancestral properties of Govindasamy Gounder as co-parceners by virtue of Hindu Succession Amended Act, 2005, also should be decided only at the time of trial. Hence the contention of the Respondents that this petition is not maintainable on the ground that the petitioners are not entitled for the enhanced share as per the (End of 5th page in original) Hindu Succession Amended Act, 2005, cannot be accepted. The petitioner has only sought for amendment regarding their share in the ancestral properties of Govindasamy Gounder. Hence I am of the view that proposed amendment will not change the nature or character of the suit and the suit will remain as a partition suit even after the proposed amendment is made."

Respondent Nos. 1 to 4 challenged the order of the trial Court in CRP (PD) No.1715 of 2011. They also filed M.P. No.1 of 2011.

The learned Single Judge of the High Court referred to order dated 19.9.2011 passed by him in CRP(PD) No.3347 of 2009 and set aside the order of the trial Court by recording the following cryptic observation:

"Considering the said facts and circumstances, the order under revision is liable to be set aside and accordingly, set aside."

We have heard learned counsel for the parties and perused the record.

A reading of the impugned order shows that even though the learned Single Judge did not find any jurisdictional infirmity or patent legal error in the order passed by the trial Court, he allowed the revision by simply relying upon paragraphs 5 to 8 of the order passed by him in CRP (PD) No. 3347 of 2009 and that too without considering the ambit and scope of Order VI Rule 17 CPC.

In our opinion, the approach adopted by the learned Single Judge of the High Court in deciding the petition filed by respondent Nos. 1 to 4 is ex-facie contrary to the law laid down by this Court in Surya Dev Rai vs. Ram Chander Rai & Ors. 2003 (6) SCC 678 and Shalini Shyam Shetty & Anr. vs. Rajendra Shankar Patil 2010 (8) SCC 329 and on this ground alone the impugned order is liable to be set aside.

We are further of the view that the reasons assigned by the trial Court for granting leave to the

appellants to amend the plaint were legally correct and the learned Single Judge committed serious error by setting aside the order of the trial Court and that too without assigning any cogent reasons.

In the result, the appeal is allowed, the impugned order is set aside and the one passed by the trial court is restored. The trial Court shall now proceed with the matter and decide the suit in accordance with law.

.....J.
[G.S. SINGHVI]

.....J.
[V. GOPALA GOWDA]

NEW DELHI,
AUGUST 23, 2013.