



C.R.P.(MD)No.1864 of 2022.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reserving the Judgment	Date of Pronouncing the Judgment
19.04.2023	08.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.1864 of 2022

and

C.M.P.(MD)No.8387 of 2022

1.Dinakaranpandian
Poomayilthai (Died)
2.Akilandeeswari
3.Chandrakala
4.Siriya Alagupandian

... Petitioners

vs.

1.Muthurathinam Ammal
2.Nagajothi
3.Deivarani
4.Manikandan
5.Vasuki
6.Indhirani
7.Indhirani Ammal
8.Ukkirapandian
9.Viji Anandhi
10.Anandhi Priya
11.Ganesan

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated



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08.07.2022, passed in I.A.No.1 of 2021 in O.S.No.27 of 2018, on the file of the Additional District Court, Virudhunagar.

For Petitioners	: Mr.C.Selvaraj
For R1 to R6	: No Appearance
For R7	: Mr.S.Parthasarathy

ORDER

The petitioners are the plaintiffs in O.S.No.27 of 2018 before the Additional District Court at Virudhunagar. The petitioners are aggrieved by the impugned order, dated 08.07.2022, passed in I.A.No.1 of 2021 in O.S.No.27 of 2018. The said I.A. was filed for amending the plaint under Order VI Rules 17 and 18 read with Section 151 of C.P.C. before commencement of the trial.

2.By the impugned order, out of five amendments, the prayer for two amendments namely, the inclusion in Paragraph No.4 of the plaint, regarding the Will that is said to have been executed by the father of the petitioners and amendment to the schedule to the plaint has been rejected. The relevant portion of the impugned order partly rejecting the application filed by the petitioners, reads as under:-



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"The main contention on the side of the 7th respondent is that if the proposed amendment is allowed as it is, it would take away the admission made by the petitioners in the plaint. In this regard, already a judgment of the Supreme Court in the case M.Revanna Vs Anjanamma (D) by LRs and Others (2019) T.N.C.J 145 (SC) was submitted. Wherein it is held that

Civil Procedure Code, 1908 - Order 6, Rule 17 - Amendment in plaint of partition suit pleading that a prior partition had taken place as per memorandum of partition deed dated 18.5.1972 - Application filed on 1.9.2008 - Original partition suit was filed in the year 1993 seeking partition and separate possession of joint family properties - Amendment allowed - Set aside by High Court - Legality of - Perusal of record – Amendment in plaint is not only belated but also not bona fide - If allowed would change the nature of suit as well as character - It would lead to a travesty of justice - It amounts to allowing plaintiff to withdraw their admission made in the plaint that the partition had not taken place earlier - Order impugned quashing the order allowing the amendment is confirmed - Appeal dismissed.

In this case in para.4 of the plaint it is stated that Thirunavukkarasu Thevar intestate on 14.07.1996 without executing any kind of documents Now, the amendment of proposed amendments is to the effect that said Thirunavukkarasu Thevar executed a Will in favour of the petitioners. So, as per the above judgment and facts of this case, it is clear that if allowed it would take away the admission made by the petitioners in the original plaint. So, any amendment with respect to the fact now pleaded that Thirunavukkarasu Thevar executed a Will cannot be permitted. Hence,



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with respect to the prayer for proposed item Nos.1 and 5 is dismissed.

5. The other amendments are sought for regarding the date of death Ukkirapandian and amendment that one Indhirani who is the daughter of Thirunavukkarasu Thevar. With respect to those amendments, there is no serious disputes and hence, the proposed amendment item Nos.2, 3 and 4 only are allowed.

6. In the result, this petition is partly allowed permitting to amend pleadings as per proposed amendment item Nos.2, 3 and 4. Prayer for amendment as proposed amendment item I and 5 are dismissed. No order as to cost."

3. It appears that earlier an amendment was made after the second plaintiff died, to include the legal representatives of the deceased second plaintiff. The averment in the affidavit filed in support of the petition for amendment read as under:-

"3. தாவா அசல் வழக்கு நிலுவையில் இருந்துவந்த நிலையில் எனது சகோதரியான பூமயில்த்தாய் இறந்துவிட்டபடியால் ஷயாருக்கு இந்நிர் 9 முதல் 11 எதிர்மனுதாரர்களை வாரிசுகளாக சேர்த்து தாவா வழக்கு மேல்நடத்தப்பட்டு வருகிறது. இந்நிலையில் தாவா வழக்குரை சீர்திருத்தம் செய்யப்படும்பொழுது எங்களால் எங்களது வழக்கறிஞரிடம் ஒருசில விபரங்கள் சொல்ல விட்டுபோய்விட்டது. அவ்வாறு விட்டுப்போன விஷயங்கள் தாவா வழக்கில் எங்களைப் பொறுத்தவரையில் மிகவும் முக்கியமானவைகளாகும். எனவே ஷ விட்டுப்போன விஷயங்களை தாவா வழக்குரையில் சேர்க்கப்படவேண்டியது அவசியமாய் இருக்கிறது. அவ்வாறு



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விடுபட்டுப்போன விஷயங்களை தாவா வழக்குரையில் சேர்ப்பதில் இந்நிர் எதிர்மனுதாரர்களுக்கு எவ்வித நியாயமான ஆட்சேபனையும் இருக்க முடியாது. ஆனால் அவ்வாறு விடுபட்ட விஷயங்களை சேர்க்காதபட்சத்தில் தாவா வழக்கில் எங்களுக்குக் கிடைக்கவேண்டிய நியாயமான தீர்வு கிடைக்காமல் போகக்கூடிய சூழ்நிலை இருந்துவருகிறது. எனவே இந்நிர் வழக்குரையை இத்துடன் தாக்கல் செய்யப்பட்டுள்ள மனுவில் கண்ட விபரப்படி மீண்டும் சீர்திருத்தம் செய்துகொள்ள அனுமதியளித்து உத்தரவிட வேண்டியது அவசியமாயும் நியாமாயும் இருக்கிறது. அவ்வாறு இல்லாதபட்சத்தில் எனக்கும் 2 முதல் 5 மனுதாரர்களுக்கும் அனேக இன்னலும் ஈடு செய்ய முடியாத இழப்பும் நேரிடக்கூடியதாக இருக்கிறது."

4.It is submitted that no prejudice would be caused to the respondents, as there will be no final determination on the issue as to whether the petitioners are indeed entitled to partition the property of Late.Ukkirapandia Thevar, through whom, these petitioners claimed share in the property. Hence, it is prayed for setting the aside the impugned order, rejecting the prayer of the petitioners for amending the plaint in Paragraph No.4 and schedule to the plaint filed in support of O.S.No.27 of 2018.

5.On behalf of the seventh respondent, the learned counsel for the seventh respondent submits that the application itself was an abuse of process of the Court, inasmuch as the issue as to the status of the



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petitioners' grandmother Somu Ammal, the petitioners' father Thirunavukarasu Thevar and his brother Thayumanasamy has been categorically decided not once, but twice in previous litigations that were filed for partition and declaration. In this connection, a reference is made to the suit filed by Late.Muthuramalinga Thevar in O.S.No.61 of 1929, wherein the question regarding the status of the petitioners' grandmother Somu Ammal and their father, uncle and aunt came to be determined, wherein it has been held that the said Somu Ammal was neither the legally wedded wife of Ukkirapandia Thevar nor the petitioners' father, uncle and aunt were the children of Late.Ukkirapandia Thevar.

6.It is submitted that O.S.No.9 of 1970 was also filed by the petitioners' father Thirunavukkarasu Thevar along with their uncle Thayumanasamy, in O.S.No.9 of 1970, for declaration, before the Sub Court, Ramanathapuram. The said suit was also dismissed by the Sub Court, Ramanathapuram, vide judgment and decree dated 31.01.1976. It is further submitted that the judgment and decree in O.S.No.61 of 1929 was the subject matter of an appeal in A.S.No.343 of 1938, wherein also the petitioners' grandmother and their father, uncle and aunt were not



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recognized as the legal heirs of Late.Ukkirapandi Thevar.

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7.That apart, the learned counsel for the seventh respondent submitted that the averment in the affidavit filed in support of the application is also bereft of any details and no reasons have been given except by stating that the petitioners failed to bring any application for amendment after the application was filed for bringing the legal representatives of the second plaintiff on record.

8.The learned counsel for the seventh respondent further submits that the Will, dated 22.03.1995, which was said to have been executed by Late.Thirunavukarasu Thevar, the father of the petitioners [Plaintiffs 1 to 5], has no relevance to the partition suit that has been instituted by the petitioners. If the Court is inclined to dismiss this Civil Revision Petition, the right to mark the Will may be preserved through the custodian of the Will.

9.It is also submitted by the learned counsel for the seventh respondent that the precious time of the Court is being wasted by the



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petitioners by filing frivolous suits and applications and therefore, the present Civil Revision Petition should be dismissed with exemplary costs.

10.I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the seventh respondent.

11.The impugned order does not disclose at what stage the application for amendment of the plaint in I.A.No.1 of 2021 was filed by the petitioners herein. As per proviso Rule 17 to Order VI of C.P.C., no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

12.In this case, the application that was filed for amendment of the plaint was for five different amendments. Out of five amendments, the amendment has been allowed for three items, whereas, two items



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pertaining to the alleged Will executed by the petitioners' father Late.Thirunavukarasu in favour of the first plaintiff on 22.03.1995, has been denied. The petitioners' father Late.Thirunavukarasu died on 14.07.1996. The affidavit filed in support of the application is silent as to why the plaint was silent regarding the execution of the Will, dated 22.03.1995 and as to when the aforesaid Will surfaced warranting an amendment to the plaint in O.S.No.27 of 2018. The other amendments, which have been denied is the consequential relief of marking the above said Will. However, marking of the Will which is said to have been executed by the petitioners' father in favour of the first petitioner will not prejudice Defendant Nos.1 to 8/Respondent Nos.1 to 8 as it their case that the said Somu Ammal, the paternal grandmother of the plaintiffs in the above suit and great grandmother of Defendant Nos.9 to 11/Respondent Nos.9 to 11 herein is not the wife of Late.Ukkirapandia Thevar, who said to have been died on 04.06.1938. Respondent Nos.1 to 8 [Defendant Nos.1 to 8] are said to be the descendants of Late.Ukkirapandia Thevar through his third wife Nagammal and daughter named "Indirani". These defendants/respondents are said to be the great grandchildren of Late.Ukkirapandia Thevar and third wife



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Nagammal. By allowing amendment to introduce the Will at best will prejudice the rights of the children of Late.Thirunavakarasu, the father of the petitioners/plaintiffs and grandfather of Defendant Nos.9 to 11/Respondent Nos.9 to 11 herein, they have not objected to the above amendment.

13.Whether there was an admission that Late.Thirunavukarasu died intestate or executed a Will on 22.03.1995 is of no relevance if the parties to the properties had not partitioned earlier even if the petitioners' paternal grandmother Somu Ammal is recognized as the wife of Late.Ukkirapandia Thevar.

14.In my view, having allowed three amendments in favour of the petitioners, no prejudice will be caused to the Respondent Nos.1 to 8 [Defendant Nos.1 to 8], if two other amendments are allowed. There is no final determination of the *inter se* rights of the parties to the said suit by merely allowing amendments to the pleadings.

15.The Hon'ble Supreme Court in **Life Insurance Corporation of**



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India vs. Sanjeev Builders Private Limited and others reported in **2018 (11) SCC 722**, has held that the Court have to be liberal in allowing the application for amendment. Consequently, I am inclined to allow I.A.No.1 of 2021 to the extent it was disallowed by the Additional District Court, Virudhunagar. The petitioners are directed to carry out necessary corrections in the plaint in O.S.No.27 of 2018 before the II Additional District Court, Virudhunagar and file a clean copy by service a copy of the same to the respondents herein [defendants in the above suit]. The learned Additional District Judge, Virudhunagar, is directed to dispose the suit after framing issues and subjecting the parties to trial as expeditiously as possible.

16.This Civil Revision Petition stands allowed with the above observation. No costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

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The Additional District Judge,
Virudhunagar.

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C.SARAVANAN, J.

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PRE-DELIVERY ORDER MADE IN
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DATED : 08.06.2023