

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2015

CORAM:

THE HON'BLE **MS. JUSTICE R.MALA**

C.R.P.(PD).No.4421 of 2015

and

M.P.No.1 of 2015

S.Chandrasekaran
S/o.Sinmayanatha Reddiar

..2nd Respondent/2nd Defendant/
Petitioner

Vs.

1.Padmini

2.Santhi

3.Parimaladevi

4.S.Balachandra

5.T.Savithri

6.A.Krishnaveni

7.S.Sathish

8.S.Prasath

.. Petitioners & Respondents 3 to 7/
Plaintiffs & Defendants 3 to 7/
Respondents

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution
of India against the fair and decretal order dated 30.06.2015 passed

in I.A.No.240 of 2015 in O.S.No.16 of 2010 on the file of the II Additional District Judge, Chidambaram.

For Petitioner : Mr.A.Muthukumar

ORDER

Heard the learned counsel appearing for the revision petitioner.

2. The petitioner has come up with the present Civil Revision Petition challenging the impugned order dated 30.06.2015 made in I.A.No.240 of 2015 in O.S.No.16 of 2010 on the file of the II Additional District Judge, Chidambaram, wherein the application filed under Order 6 Rule 17 CPC to amend the plaint came to be allowed.

3. The learned counsel for the revision petitioner would submit that the respondents 1 to 3 herein as plaintiffs had filed the suit for partition and separate possession of 1/7th share in the suit properties i.e., two items of properties against their father, brothers and sisters. During the course of the trial, when the evidence on the side of the plaintiffs was closed and when the matter was posted for evidence on the side of the defendants, the father of the plaintiffs died on

30.05.2013. Thereafter, the plaintiffs filed an application in I.A.No.240 of 2015 in O.S.No.16 of 2010 to include 17 items of landed properties stating that the alleged Will dated 30.04.2013 said to have been executed by their father is not genuine. The Trial Court after considering the submissions made by either side allowed the application, against which the present Civil Revision Petition has been preferred.

4. The learned counsel for the revision petitioner would put forth his argument in two limbs. One is that there is delay in preferring the application under Order 6 Rule 17 CPC to amend the plaint. Though the father of the plaintiffs died on 30.05.2013, the application for amendment came to be filed only on 20.04.2015. Further, no sufficient reason has been assigned as to why there is such an enormous delay. The second limb of the argument is that the suit properties are the self acquired properties of the father and that he has executed the Will in favour of the second defendant on 30.04.2013. The said fact is evident even from the written statement filed by the father during his life time, wherein he has stated that the subject matter of the suit is not for partition, since it is his separate property and he got the same from his paternal uncle by way of Will. But the Trial Court without considering the said factum had allowed

the application and hence, the learned counsel for the revision petitioner prayed for setting aside the order passed by the Trial Court.

5. The learned counsel further submitted that as per the proviso to Order 6 Rule 17 CPC, 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.

6. Considered the submissions made by the learned counsel for the revision petitioner and perused the typed set of papers.

7. It is an admitted fact that the plaintiffs are the daughters of the 1st defendant and sisters of the defendants 2 to 5. The plaintiffs filed the suit for partition and separate possession of 1/7th share in the suit property. However, disputing the same, the 1st defendant, who is the father, filed the written statement stating that the suit properties are not available for partition since he acquired the same by way of a Will from his paternal uncle. Admittedly, when the plaintiff side evidence was over, the 1st defendant/father died on 30.05.2013 and the present application for amendment came to be filed on 20.04.2015, praying to include 17 items of properties which

stands in the name of the 1st defendant/father stating that only after the commencement of trial, the 1st defendant/father died and so, in order to avoid partial partition, they had included other items of the properties.

8. So the point as to whether the properties are the self acquired properties of the 1st defendant or the ancestral properties and whether the children of the 1st defendant are entitled to share in the suit properties had to be decided only at the time of trial. Further, the genuineness of the Will dated 30.04.2013 which is also disputed by the plaintiffs has to be decided only at the time of trial.

9. In such circumstances, the Trial Court has rightly allowed the application preferred by the plaintiffs under Order 6 Rule 17 CPC and I do not find any infirmity or illegality in the order passed by the Trial Court.

10. In fine, the Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

24.11.2015

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To

The learned II Additional District Judge,
Chidambaram.

R.MALA, J.

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