

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2015

CORAM

THE HONOURABLE MS. **JUSTICE R.MALA**

**CRP.PD.NO.4726 of 2015**

**and M.P.No.1 of 2015**

Janaki

...Petitioner/Plaintiff

Vs

1.Banumathi  
2.Gothainayaki  
3.Saranya  
4.Palanisamy

.. Respondents/Defendants

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 23.06.2015 in I.A.No.705 of 2014 in O.S.No.15 of 2009 on the file of the District Munsif Court, Gobichettipalayam.

For Petitioner : Mr.N.Manokaran

### **O R D E R**

Civil Revision Petition is filed against the fair and decreetal order dated 23.06.2015 in I.A.No.705 of 2014 in O.S.No.15 of 2009 on the file of the District Munsif Court, Gobichettipalayam.

2.The revision petitioner herein as a plaintiff filed a suit in O.S.No.15 of 2009 for permanent injunction restraining the defendants from encumbering the suit property and for claiming her share in the sale proceeds lying with the fifth defendant and also other reliefs. During pendency of the suit, the revision petitioner/plaintiff has filed an application in I.A.No.705 of 2014 for amending the plaint to declare the death of her father Somasundaram as civil death, since his whereabouts was not known for the past 10 years and also for partition and separate possession of 5/16 shares in the suit property. The trial Court, after hearing both sides, dismissed the application, against which, the present revision has been preferred by the plaintiff.

3.Learned counsel for the revision petitioner submits that the trial Court has dismissed the application stating that the share claimed in the application is wrongly mentioned as 5/16 instead of 5/8. Even though the plaintiff wants to declare the death of her father as civil death as his whereabouts was not known for more than 10 years, they have not impleaded the Government officials as parties to the proceedings. He further submits that since it is a suit for permanent injunction, to avoid multiplicity of proceedings, amendment application ought to have allowed and the Government has to be impleaded as an

additional party to the proceedings. That factum was not considered by the trial Court. In the affidavit filed in support of the application, it was stated as 5/8 share, whereas in the prayer, it was stated as 5/16, which is a typographical mistake. Moreover, amendment application has been filed before commencement of trial. Therefore, he prayed for allowing the revision.

4. At the time of admission, argument of the learned counsel for the revision petitioner is heard in length.

5. On perusal of the typed set of papers, it reveals that the plaintiff/revision petitioner has filed the suit for permanent injunction restraining the defendants 1 to 4 from encumbering the suit property and claiming her share in the sale proceeds lying with the fifth defendant stating that the suit property is an ancestral property of her grand father, who died intestate leaving behind his son Somasundaram. The said Somasundaram is none other than the father of the plaintiff, D2 and D3. His whereabouts is not known for the past 6 years. The first defendant is none other than the mother of the said Somasundaram. Fourth defendant is the brother of the first defendant. It was further stated that sugar cane crops raised in the suit property

are registered with the fifth defendant. Since the fourth defendant has attempted to grab the suit property and trying to defraud the plaintiff's share, the plaintiff was constrained to file the suit for the aforesaid reliefs.

6. According to the revision petitioner/plaintiff, since whereabouts of her father Somasundaram was not known for the past 10 years, she is entitled to 5/8 share in the suit property.

7. As per the dictum of the Apex Court, while filing application under Order 6 Rule 17 C.P.C., no amendment can be allowed if nature of the suit and cause of action has been changed.

8. Admittedly, the suit has been filed only for permanent injunction restraining the defendants 1 to 4 from encumbering the suit property. Now the proposed amendment is for partition and separate possession of share in the suit property. So nature of the suit has been changed. Furthermore, in the affidavit filed in support of the application, it was stated that the plaintiff is entitled to 5/8 share whereas in the petition, it was stated as 5/16 share. Further, the plaintiff is claiming share on the basis that the whereabouts of her

father Somasundaram was not known for the past 10 years and hence, to declare the same as civil death. Admittedly, no complaint has been lodged regarding this and Government is necessary party to declare that the death of Somasundaram is civil death as per law. The trial Court has rightly held that declaration shall not be granted without impleading Government as a party.

9.Considering the aforestated circumstances of the case, I am of the view, the trial Court has considered all the aspects in proper perspective and came to the correct conclusion. So the impugned order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed. The Civil Revision Petition deserves to be dismissed and it is hereby dismissed. It is left open to the plaintiff/revision petitioner to file a separate suit for the relief sought for in the application.

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

**22.12.2015**

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Index:Yes/No

**R.MALA,J.**

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To

The District Munsif Court, Gobichettipalayam.

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