



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 9/2/2015

C O R A M

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

C.R.P. PD(MD) No.2489 of 2014

a n d

M.P.(MD) Nos.1/2014 and 1/2015

WEB COPY

1. N. Muthurani
2. N. Kavitha
3. N. Baburaj
4. N. Rajkumar
5. Minor.N.Kamali
rep.by her mother and 1st petitioner
N.Muthurani.

...Petitioners

Vs.

1. Usha
2. Rajeswari

...Respondents

Petition filed under Article 227 of the Constitution of India against the order passed in I.A.No.501 of 2014 in O.S.No.119 of 2009 dated 18/9/2014 on the file of V Additional District Judge, Madurai.

For petitioners ... Mr.S.Meenakshisundaram
for Ms.N.Juliet Latha
For respondent ... Mr.J.Bharathan
for Mr.R.G.Shankar Ganesh

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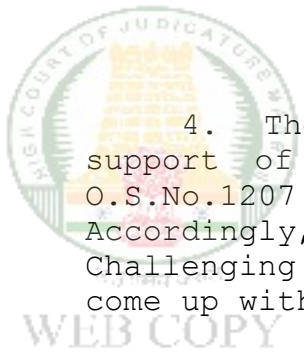
Orders reserved on 29/1/2015

O R D E R

The defendants in the suit are the petitioners filed this Civil Revision Petition against the order allowing the amendment petition under Order 6 Rule 17 of the Code of Civil Procedure.

2. The suit is originally filed by the plaintiffs for partition claiming to be the first wife (first plaintiff) of one Napoleon, since deceased. The first defendant is said to be the another wife of Napoleon. However, there is a dispute regarding the status of wife between both. The present suit was dismissed for default on 16/2/2012 and thereafter, it was restored.

3. In the meanwhile, the first plaintiff claims to have got knowledge about the property purchased by her husband during his life time on 16/9/1994. As the first defendant was attempting to alienate the property, in order to stop the same, the first plaintiff filed another suit in O.S.No.1207 of 2012 on the file of the Principal Sub-Court, Madurai, seeking partition of the said property. In the said suit, it was contested by the defendants that the same was barred by the principle of Order 2 Rule 2 of the Code of Civil Procedure and the same cannot be proceeded further. Therefore, the present application in I.A.No.501 of 2014 was filed by the plaintiffs for amendment of the plaint by including the said property.



4. The first plaintiff had also averred in the affidavit filed in support of the petition that she would withdraw the suit filed in O.S.No.1207 of 2012, if the amendment application is allowed. Accordingly, it is now stated that the other suit is already withdrawn. Challenging the allowing of the amendment application, the defendants had come up with the above Civil Revision Petition.

5. It is contended by the learned counsel for the petitioners that the first plaintiff had already sold the property which was ought to be included by way of amendment on 6/3/2014. Having parted with her right, title and interest in the property, there is no need for including the said property in the suit.

6. The only question that has to be decided is whether the order of the learned V Additional District Judge, Madurai, allowing the amendment application can be sustained or not.

7. The contention of the learned counsel for the petitioners was that if the amendment petition is allowed, his defence of partial partition would be rendered useless. Secondly, because of the amendment, the other defence under Order 2 Rule 2 of the Code of Civil Procedure taken by him in the other suit was also lost.

8. The learned counsel for the respondents contended that the above contentions of the petitioners are untenable as the defendants having taken the plea of partial partition, it is the duty of the plaintiffs to meet the same. To avoid such plea, the plaintiffs had now sought for inclusion of the suit property by way of amendment. The petitioners herein also had not filed any written statement in the second suit filed in O.S.No.1207 of 2012. In fact, the petitioners deny the status of the first plaintiff as the wife of the deceased Napoleon.

9. The learned counsel would further state that after the application for amendment was allowed, the plaintiffs filed a memo before the Principal Sub-Court, Madurai for withdrawal of O.S.No.1207 of 2012 which was objected to by the petitioners herein which constrained the plaintiffs to file an application under Order 23 Rule 1 of the Code of Civil Procedure and finally, the suit was allowed to be withdrawn. The suit being one for partition and both the first plaintiff as well as the first defendant claiming to be the wives of the deceased Napoleon, the status of the parties have to be decided in the suit. Thereafter, their share in the suit property being the suit for partition, the burden is equally cast on both parties and the amendment is only for inclusion of the property which was omitted to be added by the first plaintiff not wilfully but she did not have the knowledge at that point of time.

10. It is also pointed out in the affidavit that the trial had not commenced and the plaintiffs had not entered the witness box till date and no documents have been marked. Hence there is no impediment for allowing such amendment. As it is also the settled principle that pretrial amendments have to be carefully allowed, the trial Court was right in allowing the amendment.

11. I have also given anxious consideration to the rival contentions of both the counsels and I see no material irregularity in the order of the V Additional District Judge, Madurai.



12. In the result, this Civil Revision Petition is dismissed. No costs. The order allowing the petition under Order 6 Rule 17 of the Code of Civil Procedure, is confirmed. The revision petitioners/defendants are permitted to file additional written statement, if any within a period of four weeks, after the service of the amended plaint. Consequently, the connected Miscellaneous Petition Nos.1 of 2014 and 1 of 2015 are closed.

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

To
The V Additional District Judge, Madurai.

+1CC to M/s.R.G.Shankar Ganesh, Advocate in SR.5728
+1CC to M/s.R.Narayanan, Advocate in SR.6097

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09.02.2015

mvs
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