



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 12.01.2015
CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

WEB COPY

C.R.P (MD) No.21 of 2015
and
M.P (MD) No.1 of 2015

Rasammal .. Petitioner/Petitioner/Plaintiff

Vs.

1.V.Subramaniam
2.Rengasamy .. Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order passed by the Additional District Munsif, Karur in I.A.No.660 of 2014 in O.s.No.36 of 2010, dated 16.10.2014.

For Petitioner : Mr.A.Haja Mohideen

ORDER

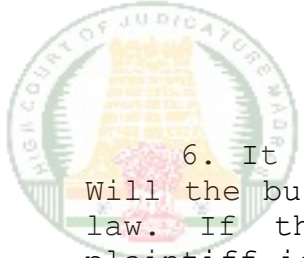
This Civil Revision Petition is directed against the order in dismissing the petition filed under Order 6 Rule 17 of the Code of Civil Procedure, 1908 in I.A.No.660 of 2014 to amend the plaint.

2. Heard the learned counsel appearing for the petitioner.

3. The plaintiff has filed the suit in O.S.No.36 of 2010 on the file of the Additional District Munsif Court, Karur for permanent injunction. In the said suit, the plaintiff filed an application in I.A.No.660 of 2014 to amend the plaint. The amendment sought for is that a Will was executed by Nallammal on 16.02.1993 in favour of the defendants under which, the defendants are claiming right and title to the suit property. The plaintiff now sought for an amendment to declare that the Will is bad and unenforceable. The suit is only for bare injunction for which, the only factum of possession has to be gone into.

4. If the title of the plaint is denied, it is for the plaintiff to file an amendment including the relief of declaration of title.

5. In this case, the plaintiff has asked for only declaration that the Will is bad. However, the learned Additional District Munsif, Karur, who tried the application, has dismissed the application on the ground of limitation, which is *per se* wrong. The suit is one being for permanent injunction, it is only the factum of possession that has to be established by the plaintiff in the suit. If the defendants denied the title, it is open to them to file an amendment for declaration of title. In this case, the defendants have brought the Will, dated 16.02.1993 under which they claimed title and the plaintiff has sought for declaration that the Will is bad.



6. It is settled principle that any person, who is claiming under a Will the burden is upon him to establish the same in the manner known to law. If the defendants are claiming title under the Will and the plaintiff is denying the same, it is for the defendants to prove that the Will was executed in the manner known to law. Therefore, the prayer that is sought for by the petitioner is not necessary, though it is dismissed by the learned Additional District Munsif, Karur, the reasoning is not correct.

7. In view of the above facts, there is no reason to interfere with the order in dismissing the application for amendment and the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(T & P)

\\True copy\\

Sub Assistant Registrar

To

The Additional District Munsif, Karur.

+1cc to MR.A.HAJA MOHIDEEN, ADVOCATE SR.NO.1675

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12.01.2015

PS

NA/16/02/2015/P2/3C