



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2015

CORAM:

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

C.R.P. (MD) .No.398 of 2015 (PD)

and

M.P. (MD) .No.1 of 2015

Anns.A.Raveena (Minor)

... Revision Petitioner/Petitioner/Plaintiff

vs.

1.Iruthayamary

2.M.Britto

3.M.Arul Sahaya Jegan

4.M.Kulanthai Pradeep

5.Kulanthai Jerosine

6.M.Anitha

... Respondents/Respondents/Defendants

PRAYER: This Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No.699 of 2014 in O.S.No.218 of 2012 on the file of the 2nd Additional Sub Court, Nagercoil dated 11.12.2014.

For Petitioners

: Mr.R.Balakrishnan

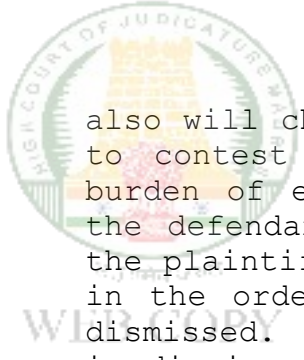
O R D E R

The plaintiff has filed the above revision challenging the dismissal of the application seeking amendment of the plaint.

2.Originally the suit was filed for partition. The fifth defendant had filed the written statement and in Paragraph No.9 of the written statement, it had been stated that the defendant's father had settled the immovable properties in favour of their sons as early as on 30.01.2012 and ever since the settlement, the defendants alone are in possession and enjoyment of the property.

3.Now, the plaintiff has come up with the application to amend the plaint contending that the alleged settlement is a fabricated one and it was created for the purpose of the suit by using coercion and undue influence and they are null and void in the eye of law. Therefore, the plaintiff had filed an application to amend the plaint to add additional prayer for declaring that the settlement deeds are null and void and will not take away the plaintiff's right over the plaint schedule property. However, the said application was dismissed by the trial Judge on the ground that they are the post trial amendment.

4.Admittedly the defendants had categorically pleaded about the settlement deeds executed by their father on 07.02.2013. While so, the plaintiff, without taking any action thereafter, allowed the suit to proceed. Already D.W.1 had been examined. By introducing the said amendment, the cause of action will change and the character of the suit



also will change. Therefore, it is dismissed. It is open to the plaintiff to contest the validity of the settlement deeds in the suit. As the burden of establishing the validity of the settlement deeds is only on the defendants, who are the beneficiaries and there is no necessity for the plaintiff to amend the plaint at the belated stage. There is no error in the order passed by the trial Court. The civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is dismissed. The II Additional Subordinate Court, Nagercoil is directed to dispose of the suit as expeditiously as possible.

Sd/-

Assistant Registrar(T & P)

\\True copy\\

Sub Assistant Registrar

To

The II Additional Subordinate Court,Nagercoil.

+1cc to MR.R.BALAKRISHNAN, ADVOCATE SR.NO.11770

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