

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2016

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (PD) No.2604 of 2012
and
M.P.No.1 of 2012

Vanitha @ Vanithakumari

.. Petitioner

vs

Vaijyanthi

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order passed in I.A.No.1415 of 2011 in O.S.No.261 of 2010 on the file of the learned District Munsif Court, Sathyamangalam, dated 06.01.2012.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.R.T.Doraisamy

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ORDER

This revision is directed against the order of the District Munsif, Sathyamangalam in I.A.No.1415 of 2011 in O.S.No.261 of 2010, dated 06.1.2012, dismissing the application giving liberty to the petitioner to file additional written statement along with application under O.8, Rule 9 CPC raising the plea of registered adoption deed.

2. The petitioner is the defendant and the respondent is the plaintiff in the suit. The plaintiff has filed the suit to declare that she is the legally wedded wife and legal representative of Raju Gowder; to declare that the suit properties belong to the plaintiff; and permanent injunction restraining the defendant, her men and agents from interfering the with the plaintiff's peaceful possession and enjoyment of the suit properties and for costs. Resisting the suit, the defendant has filed the written statement.

3. The petitioner has filed I.A.No.1415 of 2011 to permit her to file additional written statement stating that at the time of filing the written statement, she had omitted to mention the factum of registered adoption deed. It is further stated that though in the

written statement, it was mentioned that the suit has not been properly valued, by mistake the market value of the suit properties had not been mentioned. Therefore, to expatiate the above said two aspects, the petitioner sought permission of the Court to file additional written statement.

4. The said application was resisted by the respondent contending that there is no such registered adoption deed executed by the husband of the respondent and *assuming arguendo* that the same is true, it is not valid in the eye of law. The market value of the suit properties mentioned in the additional written statement is not correct. The application has been filed only to drag on the trial proceedings and prayed for dismissal of the same.

5. Upon consideration of the rival submissions, the trial Court dismissed the application. However, liberty was given to the petitioner to file an application seeking permission of the Court to receive additional written statement in respect of the deed of adoption only. Aggrieved by the order of dismissal of the application, the petitioner has filed the present revision.

6. I heard Mr.N.Manokaran, learned counsel appearing for the petitioner and Mr.R.T.Doraisamy, learned counsel appearing for the respondent and perused the entire records.

7. Learned counsel for the petitioner submits that the trial Court failed to note that the additional written statement was filed to include the plea of registered adoption deed dated 25.09.2002. He further submits that the trial Court failed to note that the suit was not properly valued as per the market value. He would submit that normally the petition to receive additional written statement should be liberally construed so as to render substantial justice to the parties. Learned counsel would further submit that the trial Court has committed an error inasmuch as it had only allowed the petitioner to raise the plea qua registered adoption deed, instead of permitting the petitioner to raise all the contentious issues for proper and complete adjudication of the dispute.

8. Learned counsel for the respondent submitted that the trial Court has rightly dismissed the application and the order of the trial Court warrants no interference.

9. It is seen from the order of the trial Court that trial had commenced and the suit is pending for cross-examination of P.W.2. At this stage, the petitioner has filed the application to permit her to file the additional written statement.

10. In the order, in respect of the market value of the suit properties, the trial Court observed that the plea of the petitioner regarding pecuniary jurisdiction is not admissible at this stage for the reason that the same has to be raised before framing of issues. Since the suit is now pending for cross-examination of PW.2, it is impossible to decide the pecuniary jurisdiction issue at this stage. The observation of the trial Court in respect of the pecuniary jurisdiction, in my considered view, is acceptable for the reason that the trial has commenced and examination of PW1 was over and now the suit is pending for cross-examination of PW2. As rightly observed by the trial Court, at the part-heard stage of the suit, the petitioner cannot raise the issue of pecuniary jurisdiction. It is settled law that objection regarding pecuniary jurisdiction has to be taken as preliminary issue before issues are framed.

11. In its order, the trial Court further observed that in the

written statement itself, the petitioner has stated the factum of execution of the adoption deed and whether the adoption deed is valid or not has to be decided only during trial. It will not be possible to accept partial additional written statement on record, however, liberty is given to the petitioner to file additional written statement along with application to receive the same in respect of adoption deed alone.

12. Apropos the plea regarding the registered adoption deed, in para 4 of the written statement, it has been mentioned that since the defendant and her husband Raju Gowder had no issues, they adopted a male child of one Rajendiran and his wife Ponmani and the said male child is under the care and custody of the defendant. The grievance of the petitioner is that due to oversight her previous counsel omitted to mention about the registered adoption deed dated 25.9.2002 in the written statement. The aforesaid grievance of the petitioner merits consideration for the reason that the defendant pleaded in her written statement regarding the adoption by her husband. Therefore, the plea of the petitioner is in line with the original written statement and is only to fortify the same and it is neither a new plea nor contradictory one, affecting the nature of the suit.

13. Without going into the merits of the averments pleaded in the written statement and the additional written statement in respect of the registered adoption deed and also other contentious points, in the interest of justice, this Court is inclined to permit the petitioner to file the additional written statement in respect of the adoption deed.

14. Moreover, no prejudice would be caused to the respondent, if the additional statement in respect of the plea of registered adoption deed is received. Further, the respondent has every right to file her reply/rejoinder to the additional written statement in respect of the registered adoption deed.

15. In the result, the order of the trial Court in I.A.No.1415 of 2011 in O.S.No.261 of 2010 dated 06.01.2012 is set aside and the Civil Revision Petition is allowed only in respect of taking on record the plea regarding registered adoption deed. The respondent is permitted to file reply/rejoinder, if any, to the additional written statement regarding the registered adoption deed within a period of two weeks from the date of receipt of a copy of this order. The trial Court is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order on day today basis. No costs.

Consequently, M.P.No.1 of 2012 is closed. It is made clear that observations, if any, in this order, shall no way preclude the trial Court from proceeding with the suit on its own merits.

20.12.2016

Note:Issue order copy on 03.01.2018
vs

Index : Yes
Internet:Yes

To

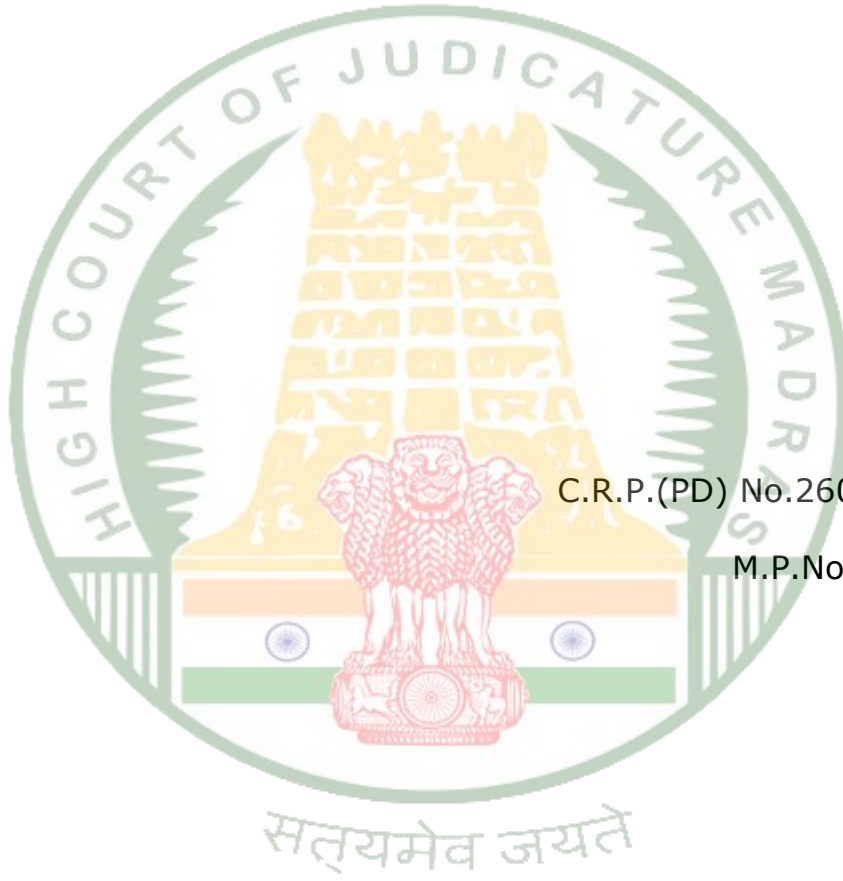
The District Munsif Court,
Sathyamangalam.



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M.V.MURALIDARAN, J.

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