

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2016

CORAM :

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

Civil Revision Petition (PD) .3441 of 2013
and M.P.No.1 of 2013

1.Kachilingam
2.Arumugam

.. Petitioners

Vs.

Indirani

.. Respondent

Revision filed under Article 227 of Constitution of India against the order dated 23.4.2013 in I.A.No.1611 of 2012 in O.S.No.136 of 2010 on the file of the District Munsif Court, Sriperumbudur.

For Petitioners : Mr.J.Sudhakaran

For Respondent: No Appearance

ORDER

सत्यमेव जयते

This revision is directed against the order dated 23.04.2013 passed in I.A.No.1611 of 2012 in O.S.No.136 of 2010 on the file of the District Munsif-cum-Judicial Magistrate Court, Sriperumbudur, allowing the petition filed under Or.6, Rule 17 of Code of Civil Procedure, 1908. The petitioners herein are the defendants in the suit.

2. The respondent herein, who is the plaintiff, has filed the suit for partition seeking 1/3rd share in the suit property. Resisting the suit, the defendants have filed the written statement.

3. The plaintiff has filed I.A.No.1611 of 2012, seeking leave of the Court to amend the plaint stating that the plaintiff's father Rathinam Mudaliar died in or about 1940, leaving behind his sons and daughter, who are the defendants and the plaintiff. It is averred that plaintiff's father was having one more son by name Gajendran, who left the house in his young age and for the past 50 years his whereabouts are not known either to the plaintiff or to the defendants. Due to inadvertence, the said fact has not been mentioned in the plaint. Recently, when the plaintiff discussed with her counsel, she was advised to mention the above said fact in the plaint. Therefore, she has filed the petition seeking amendment of the plaint by insertion of paragraph 6(a).

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4. Resisting the amendment, the defendants have filed the counter stating that the plaintiff ought to have filed petition before the commencement of trial, but the plaintiff wantonly refused to do the

same. The original plaint averments are entirely different from the present amendment. If the amendment is allowed, it will change the nature of the suit. In order to protract the proceedings, the plaintiff has filed the petition and prayed for dismissal of the same.

5. Upon consideration of the submissions, the trial Court allowed the petition. Aggrieved by the same, the defendants have filed the revision petition.

6. I heard Mr.J.Sudhakaran, learned counsel for the petitioner. No appearance on behalf of the respondents and perused the entire records.

7. Learned counsel for the petitioners submits that the trial Court ought not to have allowed the amendment petition, as the same is contrary to the provisions of Order 6, Rule 17 CPC. The trial Court ought to have taken into consideration that without any valid reason the respondent has filed the amendment petition to amend the plaint. He further submits that the trial Court erred in not following the settled principles of law laid down by the Hon'ble Supreme Court.

8. On a perusal of the typed set of papers, I find that after examination of the witnesses and when the suit was reserved for judgment, the plaintiff has filed the amendment petition seeking leave of the Court to amend plaint by insertion of paragraph 6(a). The proposed amendment reads as under:

“The plaintiff submit that his father Rathina Mudaliar is having one more son by name Gajendran who has left the house in his young age. For the past about 50 years his whereabouts are not known either to the plaintiff or to the defendants. Under Sec.108 of Evidence Act the said person is seemed to be dead.”

The original plaint paragraph 6 reads thus:

“The plaintiff submit that the said Rathinam Mudalir died in or about 1960 and survived by his wife and sons and daughter who are (1)Swornammal (wife), (2)Kachilingam Mudaliyar, (3)Arumugam Mudaliyar (sons) and (4)Indirani (daughter) each being inherited 1/4th undivided share in the suit property.”

9. Admittedly, the plaintiff is the sister of the defendants. She filed the suit for partition claiming one-third share in the suit property. In paragraph 8 of the plaint, it has been stated that the plaintiff's mother Swornam ammal died around 1967. After the demise of her

mother, the plaintiff and defendants each would be entitled to 1/3rd undivided share in the suit property.

10. On a perusal of the written statement annexed in the typed set of papers, I find that there is no mentioning that Rathina Mudaliar had three sons and one daughter. On the other hand, in the written statement, the defendants have pleaded acquisition of the property, enjoyment of the same and succession of the property by way of Koorchit. When the defendants are filing written statement by resisting the suit, it is their duty to furnish correct particulars to the Court by saying that one of the sons of Rathina Mudaliar left the family for good at young age. Equally the plaintiff is duty bound to plead in her plaint the correct particulars and heirs of her father when she had filed the suit for partition.

11. The point arises for consideration is whether the trial Court was right in allowing the amendment petition.

12. In *Pankaja v. Yellappa*, reported in (2004) 6 SCC 415, the Hon'ble Supreme Court held as follows:

"12. So far as the court's jurisdiction to allow an amendment of pleadings is concerned, there

can be no two opinions that the same is wide enough to permit amendments even in cases where there has been substantial delay in filing such amendment applications. This Court in numerous cases has held that the dominant purpose of allowing the amendment is to minimise the litigation, therefore, if the facts of the case so permit, it is always open to the court to allow applications in spite of the delay and laches in moving such amendment application."

13. It is well settled that Order 6, Rule 17 of the Code of Civil Procedure confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In former case, generally, it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended, in the latter cases, the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No straight-jacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.

14. In this case, though the evidence of both sides has been

concluded, in the facts and circumstances of the case, no prejudice would be caused, if the proposed amendment is allowed.

15. Though the amendment petition has been filed belatedly, having regard to the nature of the suit and also the relationship of parties, the trial Court was right in allowing the petition for amendment of the plaint. Further, I find that the proposed amendment would not alter the character of the suit in any way.

16. Technicalities of law should not be permitted to hamper the Courts in the administration of justice between the parties. Amendments are allowed in the pleading to avoid uncalled for multiplicity of litigation.

17. All amendments that are necessary to decide the controversies between the parties are to be allowed in the interest of justice. The incorporation of the proposed plaint paragraph 6(a) qua the averment of one of the sons of Rathina Mudaliar, namely Gajendran left the house in his young age, will not affect the rights of either party to the suit. Therefore, the trial Court was right in permitting the petitioner to amend the plaint. I do not find any merit in

this revision and the same is liable to be dismissed.

18. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, M.P.No.1 of 2013 is closed. The trial Court is directed to dispose of the suit on merits and in accordance with law expeditiously as possible.

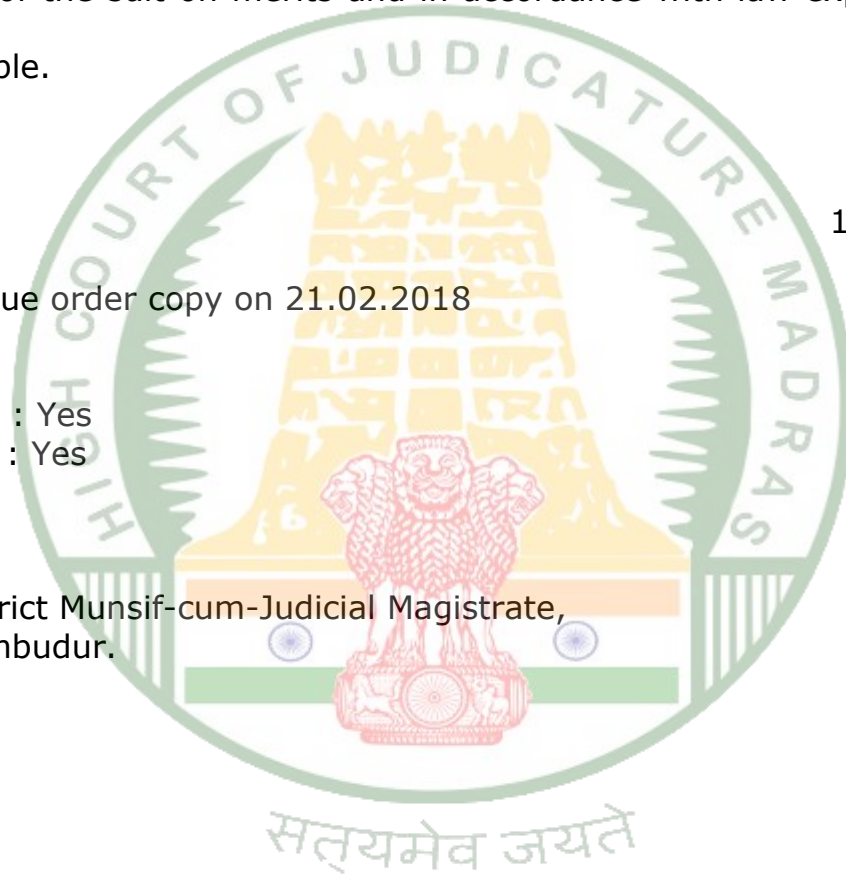
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Note: Issue order copy on 21.02.2018
vs

Index : Yes
Internet : Yes

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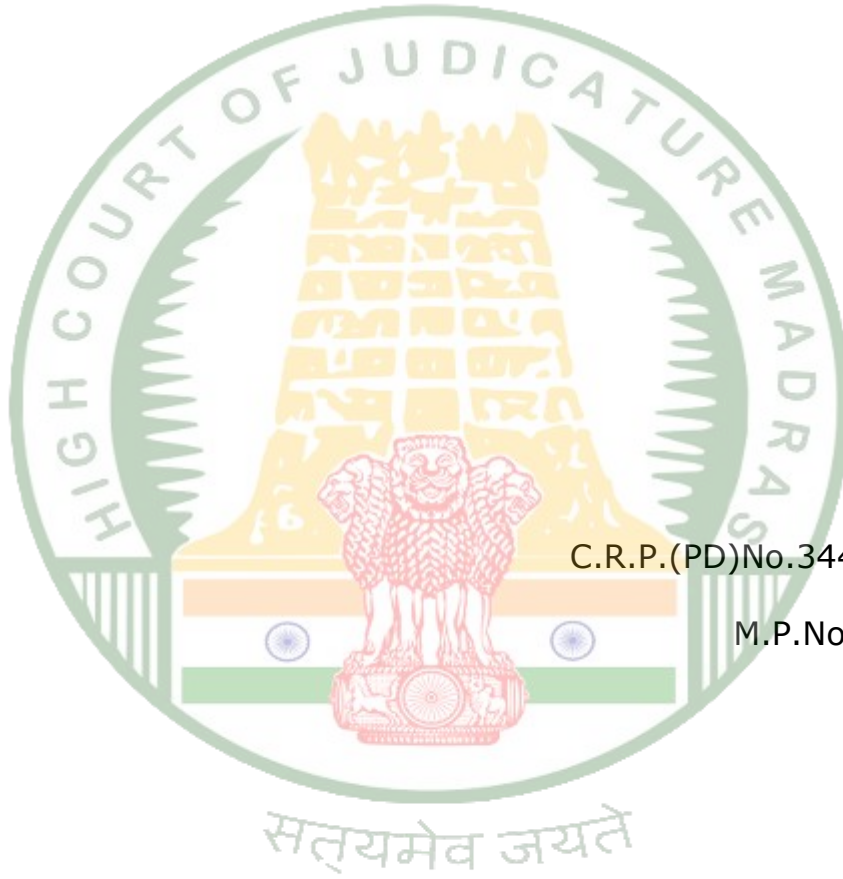
The District Munsif-cum-Judicial Magistrate,
Sriperumbudur.



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M.V.MURALIDARAN,J.

VS



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