

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN

C.R.P (PD) No.493 of 2013

&

M.P.No.1 of 2013

Rathinam

...Petitioner

vs.

1.Kaliammal

2.Mohanasundaram

.. Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and final order passed in I.A.No.513 of 2012 in O.S.No.111 of 2010 on the file of the Subordinate Judge, Perundurai dated 14.12.2012.

For Petitioner : Mr. N.Manokaran

For Respondent : Mrs.P.T.Asha

for

Mrs.Sarvabhauman Associates for R2

ORDER

The petitioner has filed a suit for partition in O.S.No.111 of 2010 before the Subordinate Court at Perundurai. The suit was contested by the respondents.

2. The petitioner thereafter filed an application in I.A.No.513 of 2012 for amendment of the plaint to incorporate certain details with regard to the acquisition of the property by her father by name Rangasami, who died on 04.08.2009. The application was opposed by the respondents by filing counter. The learned trial Judge was of the view that the application for amendment was filed only after the commencement of trial and as such the same is legally not maintainable. The application was dismissed. The petitioner filed two other applications in I.A. No.31 of 2015 and I.A.No.799 of 2015. I.A.No.31 of 2015 was filed for withdrawal of the suit with liberty to file a fresh suit on the basis of the very same cause of action. I.A.No.799 of 2015 was filed under Order VIII Rule 9 CPC to receive the reply statement, which contained a statement to the effect that Will dated 16.05.2009 was not genuine. The learned trial Judge dismissed those two applications also. The respective orders are challenged by the petitioners in C.R.P.No.3613 of 2015 and C.R.P.No.717 of 2016.

3. The learned counsel for the petitioner contended that the necessary ingredients for granting a decree in the suit in O.S.No.111 of 2010 has already been made in the plaint filed originally. Since the petitioner was not aware of the sale of the property made by

Rangasami by documents dated 06.05.1981, 02.06.1981 and 17.06.1981 and purchasing the property on 02.06.1981 by making use of the sale proceeds, the original plaint does not contain such averments. It was only later she collected the details and the same resulted in filing the petition to amend the original plaint. According to the learned counsel, the learned trial Judge should not have dismissed the application for amendment stating that the application was filed after the commencement of trial.

4. The learned counsel for the second respondent submitted that there is absolutely no merit in the revision inasmuch as the petitioner, notwithstanding her knowledge about the sale made earlier, failed to incorporate the necessary details in the plaint filed originally. According to the learned counsel, it was only after the commencement of trial, the application was filed and as such the trial Judge was right in dismissing the application for amendment.

5. There is no dispute that the petitioner claimed a decree for partition on the ground that she is entitled to a share in the property purchased by T.Rangasamy by sale deed dated 02.06.1981. The petitioner contended that she, being the daughter of Rangasamy, became a coparcener by virtue of the provision of the Hindu

Succession (Amendment) Act, 2005 (Act 39, 2005). It is true that the petitioner has not given the details of the properties earlier sold by her father on 06.05.1981, 02.06.1981 and 17.06.1981. However, the fact remains that the properties were sold by her predecessor-in-interest. The petitioner has already produced those three documents before the trial Court.

6. The suit is one for partition. Even the respondents can file an application for transposing them as plaintiffs in the suit. The trial Judge has, considered the suit for partition like any other suit. I am not in a position to accept the view expressed by the learned trial Judge while dismissing the application for amendment, filed for incorporating the details about the properties sold by the father of the petitioner. It is for the petitioner to prove that the property was purchased by making use of the consideration received by Thiru.Rangasamy by selling the properties covered by three documents. In view of the background facts, the petitioner is entitled to succeed.

In the result, the order dated 14.12.2012 in I.A.No.513 of 2012 is set aside. The application filed by the petitioner for amendment stand allowed. The respondents are at liberty to file an additional written statement. No costs. Consequently, the connected

miscellaneous petition is closed.

09.09.2016

Index: Yes/No

Internet: Yes

gpa

To

The Subordinate Judge

Perundurai

K.K.SASIDHARAN,J.

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