



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.2051 of 2015 (PD)

and

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

1.Nithiya
2.Divya
3.Selvi

.. Petitioners/Petitioners/Plaintiffs

Vs.

Elangovan

.. Respondent/Respondent/Defendant

PRAYER: Civil Revision Petition is filed, under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in I.A.No.2 of 2015 in O.S.No.21 of 2010 on the file of the District Munsif Court, Palani, dated 12.06.2015.

For Petitioners : Mr.D.Venkatesh

ORDER

The petitioners are the plaintiffs whereas the respondent is the defendant in the suit in O.S.No.21 of 2010. The petitioners filed a suit for permanent injunction.

2.According to the petitioners, they are entitled to share in the property as legal heirs of their father Anandaraj. The petitioners filed I.A.No.2 of 2015 for amendment of the plaint. Their father Anandaraj executed a Will dated 10.09.1997 in favour of the petitioners and died on 23.12.1997. As per the Will, they are enjoying the property. In the suit, by mistake, the date of the death of their father was mentioned that their father died in the year 1994. In the circumstances, they have filed an application in I.A.No.2 of 2015 for amendment of the plaint. The respondent filed counter affidavit stating that the petitioners claiming right in the suit as legal heirs of their father Anandaraj. The Will now sought to be introduced is forged one. The petitioners were fully aware of the date of death of their father. Now, with an ulterior motive, they have come out with the petition to amend the plaint only to drag on the proceedings. The learned Judge considering all the facts and materials available on record, dismissed the I.A.No.2 of 2015 holding that proposed amendment introduces new cause of action and will change the nature of the suit. Against the said order, the petitioner has filed this present Civil Revision Petition.

3.The learned counsel for the petitioners submitted that amendment sought for is pre-trial amendment and would not cause any prejudice to the respondent. The amendment is to correct the typographical error with regard to date of death of their father and to include Will executed by their father. The amendment petition is filed to avoid multiplicity of proceedings.



4.I have heard Mr.D.Venkatesh, learned counsel appearing for the petitioner and also carefully perused the entire materials on record.

5. From the records, it is seen that the petitioners have come out with the petition for amendment of date of death of their father as well as to include the averments with regard to Will alleged to have been executed by their father. The petitioners claiming right in the suit as legal heirs of their father Anandaraj. By amending the plaint by including the averments with regard to the Will and their enjoyment based on the Will a new cause of action sought to be introduced. It changes nature of claim of petitioner. The learned Judge considered all these aspects and dismissed the I.A. There is no irregularity or illegality in the said order warranting interference by this Court.

6.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(W)

/True copy/

Sub Assistant Registrar(CS)

To

The District Munsif, Palani, Dindigul District.

+1cc to Mr.D.Venkatesh, Advocate in SR.9494

C.R.P(MD)No.2051 of 2015(PD)
17.02.2016

am

PBK/AAL-MPA 09/03/2016 ::2P-3C: