



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.04.2016

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.733 of 2016 (PD)

and

C.M.P(MD)No.3486 of 2016

1.Palanichamy
2.Murugesan
3.Vanarajan
4.Ganesan
5.Mani

.. Petitioners

Vs.

1.Ravi
2.Eswari

.. Respondents

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the Fair and Decretal order, dated 04.01.2016 passed in I.A.No.101 of 2015 in O.S.No.124 of 2010, on the file of the Subordinate Judge, Theni and allow the present Civil Revision Petition.

For Petitioners : Mr.R.Subramanian

ORDER

This Civil Revision Petition has been filed to set aside the Fair and Decretal order, dated 04.01.2016 passed in I.A.No.101 of 2015 in O.S.No.124 of 2010, by the learned Sub Judge, Theni.

2.The petitioners are the defendants. The respondents 1 & 2 along with one Karuppaiah filed the suit in O.S.No.124 of 2010, before the District Court, Theni for preliminary decree for half share in the suit property and to pay the mesne profits by the defendants to the plaintiffs and for costs. Pending suit, Karuppaiah died. The respondents 1 and 2 filed I.A.NO.101 of 2015, on the file of the Sub Court, Theni, stating that Karuppaiah died and prayed for recording the fact that they are the legal representatives of said Karuppaiah and as plaintiffs 2 & 3. They also prayed for amendment of plaint to include the fact that the property was already partitioned in the presence of elders and that the petitioners did not hand over the property allotted to Karuppaiah and they were paying mesne profit upto 2008 and they did not pay subsequently.

<https://hcservices.equity.in/services/> 3.The petitioners filed counter affidavit and opposed stating that the petitioners have no objection to record death of Karuppaiah and implead respondents 1 & 2 as plaintiffs. They

opposed amendment sought for on the ground that by amendment, the respondents 1 and 2 are introducing a new cause of action.

4.The learned Judge considering the facts and materials on record allowed the application on payment of costs of Rs.1,000/-. Against the said order, dated 04.01.2016, the petitioners have filed the present Civil Revision Petition.

5.The learned counsel for the petitioners contended that the learned Judge failed to see that the amendment sought for is directly opposed to the earlier plea taken in the plaint. The respondents 1 and 2 have not given any reason for delay in filing the application for amendment. The intention of the respondents 1 & 2 is only to drag on the proceedings.

6.The learned counsel for the petitioners relied on the following Judgments:-

I) (2015) 10 Supreme Court Cases 203 Ram Niranjana Kajaria v. Sheo Prakash Kajaria and others

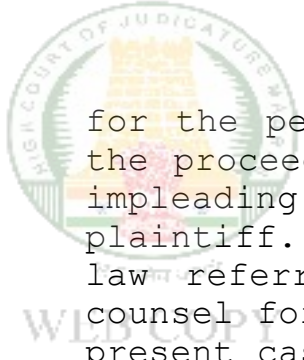
"21.In the case before us, we are afraid, many of the factors referred to above, have not been satisfied. It is significant to note that Defendants 5 and 12, after moving an application for amendment withdrawing the admissions made in the written statement, have filed a substantive suit attacking the alleged relinquishment of their claim in the family property and we are informed that the trial is in progress. In that view of the matter, we do not propose to deal with the matter any further lest it should affect the outcome of the suit filed by Defendants 5 and 12 since the declaration sought in the suit filed in 2005 is to take away the basis of the said relinquishment of the claim in the suit property. However, as far as amendment is concerned, the attempt to wholly resile from the admission made after twenty-five years, we are afraid, cannot be permitted."

ii) 1976 (4) Supreme Court Cases 320 M/s.Modi Spinning & Weaving Mills vs. M/s.Ladha Ram & Co.,

"10.It is true that inconsistent pleas can be made in pleadings but the effect of substitution of paragraphs 25 and 26 is not making inconsistent and alternative pleadings but it is seeking to displace the plaintiff completely from the admissions made by the defendants in the written statement. If such amendments are allowed the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants. The High Court rightly rejected the application for amendment and agreed with the trial Court."

7.I have heard the learned counsel appearing for the petitioners and also perused the entire materials on record.

8.The respondents 1 & 2 are seeking amendment in the body of the plaint. They are not seeking any amendment in the prayer
 https://hcservices.hcservices.gov.in/ In the circumstances, it cannot be said that the respondents 1 and 2 are introducing a new cause of action and new case is being introduced. The contention of the learned counsel



for the petitioner that the application is filed only to drag on the proceedings is untenable as respondents 1 & 2 have prayed for impleading them as plaintiffs 2 & 3 after death of original plaintiff. The trial has not started. Therefore, the provisions of law referred to and the judgments relied on by the learned counsel for the petitioners are not applicable to the facts of the present case. The learned Judge has considered all these facts and allowed the application filed by the respondents. There is no illegality or irregularity warranting interference by this Court.

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

Sd/-
Assistant Registrar (CSI)

/True Copy/

Sub-Assistant Registrar

To

The Subordinate Judge ,
Theni.

+One cc to M/s.R.Subramanian, Advocate, SR.No.18736

am
RL/3C/3P/JGB/DP/5/5/2016

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