

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.12.2017

CORAM

THE HON'BLE MR.JUSTICE **D. KRISHNAKUMAR**

C.R.P.(N.P.D.) No.1861 of 2017

Dr.Bulabai Karpagam

..Petitioner

Vs.

1. B.Meenakshi
- 2 B.Gopinath
- 3 B.Sankaranarayanan
- 4 S.Jayaganthi
- 5 B.Lakshminathan
- 6 Vijayalakshmi
- 7 K.Sampath
- 8 K.Dayalan
- 9 G.Mullaikodi

..Respondents

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 21.03.2017 in I.A.No.212 of 2016 in O.S.No.44 of 2012 on the file of the Principal District Court, Vellore.

For Petitioner : Mr.K.Govindan

For Respondents 2 &9 : Mr. V.Lakshminarayanan

For Respondents 3to8 : No appearance

ORDER

According to the petitioner, the respondent herein filed suit in O.S.No.44 of 2012 before the Principal District Judge, Vellore for partition and for allotment of 1/7th share in the suit properties to the plaintiff by metes and bounds by appointing an Advocate Commissioner. In the suit, the petitioner has filed an application in I.A.No.212 of 2016 for amending the prayer in the suit. The respondents/defendants filed counter affidavit opposing the application. The Court below erroneously allowed the application and therefore, the present revision petition filed before this Court.

2 The learned counsel for the petitioner would submit that the proposed amendment is only for the purpose of rendering complete justice. Due to oversight, the petitioner has not properly coped the main relief in the suit and hence, filed the instant application to amend the prayer in the suit. No prejudice would be caused to the petitioner if the application is allowed.

3 Per contra, the learned counsel for the respondent would submit that the revision petitioner raised new plea by filing the instant application alleging that the partition deed executed by the

parties are forgery and also prayer sought for in the amendment application is barred by limitation. It is specifically stated in the grounds of the Civil revision petition itself that the petitioner had the knowledge of forgery in the month of October 2011, whereas the instant application has been filed on 17.10.2016. The written statement in the suit was filed on 17.3.2013. Therefore, it is a clear from the facts that the instant application is barred by limitation on the basis of averments made in the affidavit filed in support of the application and also grounds raised in the present Civil revision petition. Therefore, the order passed by the Court below is perfectly valid in law and does not warrant interference by this Court.

4 Heard the learned counsel for the petitioner, the learned counsel for the respondent and perused the materials on record.

5 On perusal of the amendment application filed by the revision petitioner, the petitioner has proposed the following amendments:

1 Add as Para 17(a)

The plaintiff further submits that as the legal heirs of the deceased A.K.Bulabai Desai, including the plaintiff is entitled to get equal share in the property inherited from the deceased father A.K. Bulabai Desai, and from the bare reading of the

partition deed, dated 26.6.2008 (Doc.No.6378 of 2008), it is evident that the partition deed is unjust and illegal and the shares are not allotted equally to all the co-sharers.

2. Add as Para 17(b):

The plaintiff further submits that under these circumstances, as the earlier partition deed dated 26.6.2008 (Doc.No.6378 of 2008) was forged and not valid and not binding upon the plaintiff and hence it is just and necessary to reopen the said partition deed dated 26.6.2008 (Doc.No.6378 of 2008), by effecting fresh partition in the suit schedule properties and to re-allot one equal share to the plaintiff and consequently amend the partition deed as per the shares allotted to the parties of the deed to render complete justice.

3. Insert "& 40" in para 18 after "27(1)" and before "of the Tamil Nadu Court fees Suit Valuation Act 1955"

4. Add as Clause (g) in para 20 (Prayer Para):

To reopen the partition deed dated 26.6.2008 (Doc.No.6378 of 2008) and to amend the partition deed as per the shares allotted to the plaintiff.

6 In so far as Sl.No.1 viz., amendment sought for in para 17(a) of the plaint and in so far as Sl.No.3, amendment sought for in para 18 in respect of payment of Court fee are concerned, there is no serious objection on the side of the respondent. Therefore, amendment in respect of Sl.No.1 and 3 viz., para 17(a) and 18 is allowed. The order passed by the of the Court below in so far as Sl.No.1 and 3 is liable to be set aside.

7 The learned counsel for the respondent strongly objected the application in so far as Sl.No.2 viz., amendment in para 17(b) of the plaint. According to the learned counsel for the respondent, if the said amendment is allowed, new cause of action would arise and consequently, said relief is clearly barred by limitation. Therefore, in so far as Sl.No.2 viz., amendment in para 17(b) of the plaint, the application is liable to be rejected. As rightly submitted by the respondent, if the Sl.No.2 is amended, new cause of action arose, therefore, order of the court below is deserves to be confirmed.

8 In so far as amendment in Sl.No.4 is concerned, the learned counsel for the respondent objected the application by citing the judgment of the Hon'ble Supreme Court in **L.C.Hanumanthappa (since dead) represented by his legal representatives vs. H.B.Shivakumar [(2016)1 SCC 332]** and this Court in **A.Kumaran vs. Letchumana Mudaliar (died) & 15 others (C.R.P.(MD) (PD) No.1591 of 2010 dated 30.11.2016)**.

9 In **L.C.Hanumanthappa (since dead) represented by his legal representatives vs. H.B.Shivakumar [(2016)1 SCC 332]**, in para 29 the Hon'ble Supreme Court has held as under:

"29.Applying the law thus laid down by this Court to the facts of this case, two things become

clear. First, in the original written statement itself dated 16-5-1990, the defendant had clearly put the plaintiff on notice that it had denied the plaintiff's title to the suit property. A reading of an isolated paragraph in the written statement, namely, Para 2 by the trial court on the facts of this case has been correctly commented upon adversely by the High Court in the judgment under appeal. The original written statement read as a whole unmistakably indicates that the defendant had not accepted the plaintiff's title. Secondly, while allowing the amendment, the High Court in its earlier judgment dated 28-3-2002, decided on 28-3-2002 (KAR)] had expressly remanded the matter to the trial court, allowing the defendant to raise the plea of limitation. There can be no doubt that on an application of *Khatri Hotels (P) Ltd.* [(2011) 9 SCC 126 : (2011) 4 SCC (Civ) 484], the right to sue for declaration of title first arose on the facts of the present case on 16-5-1990 when the original written statement clearly denied the plaintiff's title. By 16-5-1993 therefore a suit based on declaration of title would have become time-barred. It is clear that the doctrine of relation back would not apply to the facts of this case for the reason that the court which allowed the amendment expressly allowed it subject to the plea of limitation, indicating thereby that there are no special or extraordinary circumstances in the present case to warrant the doctrine of relation back applying so that a legal right that had accrued in favour of the defendant

should be taken away. This being so, we find no infirmity in the impugned judgment of the High Court. The present appeal is accordingly dismissed."

10. When this Court had occasioned to deal with an identical issue in **A.Kumaran vs. Letchumana Mudaliar (died) & 15 others (C.R.P.(MD) (PD) No.1591 of 2010 dated 30.11.2016)**, following the judgment of the Hon'ble Supreme Court cited supra, this Court dismissed the application to amend the plaint on the ground that the said application is barred by limitation, whereas, in the present case, new plea of forgery has been raised. Therefore, the amendment sought for in Sl.No.4 namely in para 20 of the plaint is allowed subject to the date of filing of the application in the light of decision of the Hon'ble Supreme Court in **L.C.Hanumanthappa (since dead) represented by his legal representatives vs. H.B.Shivakumar (supra)**. Liberty is also given to the respondent to raise any objection at the time of trial.

11. In view of the above, in so far as amendment sought for in Sl.No.1, 3 and 4, the order passed by the Court below is set aside and in so far as the amendment sought for in Sl.No.2 is concerned, the order of the trial court is confirmed.

D.KRISHNAKUMAR.J,

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12 In fine, the Civil Revision petition stands partly allowed. However, no order as to costs.

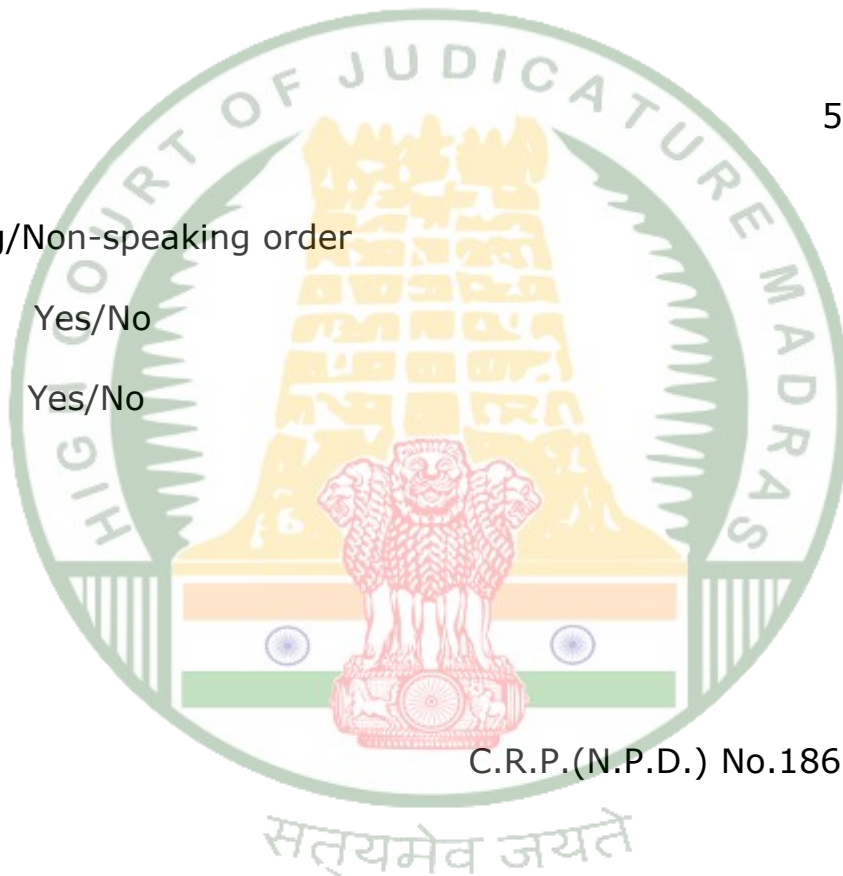
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Speaking/Non-speaking order

Index: Yes/No

Internet: Yes/No

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