

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (PD) No. 483 of 2017 and
C.M.P. No.2405 of 2017

V. Balasubramanian (Died)

V. Gunavathi

.. Petitioner

Vs.

1. D. Vijayan

2. V. Baskar

3. A.Anjali Devi

4. R.Bakiyavathi

5. Shrine Basilica

Velankanni,

rep. by its Priest Xavier

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 10.01.2017 passed in I.A. No.12 of 2017 in O.S. No.483 of 2005 on the file of the learned District Munsif Court, Nagapattinam.

For Petitioner : Mr.R.Amburosh

For Respondents : Mr.Palanisamy

ORDER

This Civil Revision Petition has been filed against the order dated 10.01.2017 passed in I.A. No.483 of 2005 on the file of the learned District Munsif, Nagapattinam.

2.The petitioner is second plaintiff in O.S. No.483 of 2005. Originally, the deceased plaintiff filed a suit for partition and separate possession of suit property against respondents 1 to 5. During the pendency of the suit, he died. The petitioner herein, who is the mother of the plaintiff got herself impleaded as second plaintiff.

3.Written statements were filed by respondents 2 to 5 in the suit and issues were framed on 30.06.2006. The Trial has been commenced and parties are let in evidence and the suit was posted for arguments. At that stage, the petitioner filed an application in I.A. No. 12 of 2017 for amendment of cause title and amendment of prayer by including the additional prayer of declaration declaring that three sale deeds namely 5/1994, 6/1994 and 433/1999 dated 19.11.1993 and 25.06.1999

respectively as null and void and for consequential amendment in the plaint as mentioned in the affidavit and petition.

4.The 5th respondent filed a counter affidavit and additional counter affidavit opposing the said application and contended that when the plaintiff was aware of the death of the priest, mentioned in the plaint, in the year 2010, the petitioner did not take any step for amendment immediately and hence, the present application is belated one. The 5th respondent has no objection for ordering application in respect of amendment 1 and 2. As far as amendment 3 to 8 are concerned, the said application cannot be allowed as claimed by the petitioner. The first plaintiff did not seek for a relief by way of an amendment when he filed the suit. After his death, the present petitioner has no right for seeking such an amendment in the suit. This Court, by order dated 28.08.2015 passed in C.R.P. (PD) No.197 of 2014, directed the Trial Court to complete the Trial within a period of 3 months and as per the direction of this Court, Trial has been commenced and evidence on behalf of both parties were completed and the arguments were heard. When the suit is posted for arguments, the petitioner has come out with I.A. No.12

of 2017. Thus, the amendment application is not maintainable.

5.The learned Judge considering the averments in the affidavit, counter affidavit, additional counter affidavit, all the materials placed on record and the direction issued by this Court in C.R.P. (PD) No.197 of 2014 dated 28.08.2015, allowed the application in respect of amendment 1 and 2 and dismissed the application in respect of amendments 3 to 8 holding that after commencement of Trial, the amendment as sought for by the petitioner, is without merits.

6.Aggrieved over the same, the present revision has been filed.

7.Learned counsel appearing for the petitioner submitted that the dismissal of the application is contrary to Article 14 and 21 of the Constitution of India and after ordering application in respect of amendment 1 and 2, the learned Trial Judge ought not to have dismissed the application in respect of amendment 3 to 8, namely, the nature of declaratory relief sought for in the suit declaring that three sale deeds are null and void and the partition cannot be granted without such declaration. He would further submit that an

amendment can be ordered even after the judgment was reserved in the suit.

8. Per contra, learned counsel appearing for the respondents would submit that originally first plaintiff filed a suit for partition claiming $1/5^{\text{th}}$ share in the suit property and for other consequential relief and after his demise, the petitioner got impleaded as second plaintiff and she did not seek for declaration declaring that the three sale deeds are null and void and the same are not binding on her. He would further submit after the petitioner got impleaded as second plaintiff, she could seek any amendment immediately. As per the direction passed by this Court in C.R.P. No.197 of 2014, the Trial has been commenced and the petitioner has fully participated in the trial and both the parties let in evidence and after full completion of the evidence by both parties and when the suit was posted for arguments, the petitioner has filed the application for amendment including a relief of declaration declaring that three sale deeds are null and void and the same are not binding on her and consequential amendment in the plaint.

9. There is no dispute that amendment can be ordered at any stage of the suit. But in the case of amendment sought for after Trial, a party, seeking amendment, has to give valid reason to show that inspite of due diligence, the application for amendment could not be filed in time. Order 6 Rule 17 of C.P.C. reads as follows:

"17. Amendment of pleadings— The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties."

10. A reading of Order 6 Rule 17 of C.P.C. makes it clear that the Court can allow the amendment application after commencement of the Trial, only when the Court comes to the conclusion that inspite of due indulgence, the party could not file application for amendment. In the application filed in support of the petition, the petitioner has not stated that inspite of due diligence, she could not have raised the present plea before commencement of Trial. The learned Judge, considering the scope of Order 6 Rule 17 of C.P.C. and exercising the jurisdiction in a

proper manner, has

dismissed the application in respect of amendment 3 to 8 sought for by the petitioner.

11. In the result, the Civil Revision Petition is dismissed. I could not find any error or material irregularity in the impugned order made by the Court below so as to warrant any interference by this Court. No costs. Consequently, connected miscellaneous petition is also dismissed.

19.04.2017

Speaking/Non-speaking order
Index : Yes

vga

To

The District Munsif,
Nagapattinam.

V.M.VELUMANI, J.

vga

C.R.P. (PD) No.483 of 2017

19.04.2017

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