

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1184 of 2012
& M.P.No.1 of 2012

Palanivel

.. Petitioner

Vs.

Mathialagan

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 05.01.2012 made in I.A.No.763 of 2011 in O.S.No.331 of 2010 on the file of the Sub Court, Namakkal.

For Petitioner : Mr.S.Saravana Kumar
for Mr.I.Abrar MD Abdullah
For Respondent : Mr.C.Jagadish

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 05.01.2012 made in I.A.No.763 of 2011 in O.S.No.331 of 2010 on the file of the Sub Court, Namakkal.

2. The petitioner is third defendant and respondent is plaintiff in O.S.No.331 of 2010 on the file of the Sub Court, Namakkal. The respondent filed suit for partition and separate possession, claiming 3/8th share in the suit property against the petitioner herein and two others. The petitioner filed written statement on 26.08.2009 and is contesting the suit. Trial commenced and parties let in evidence and closed their side. Arguments were advanced on behalf of the petitioner and when the suit was posted for arguments on behalf of the petitioner, petitioner filed I.A.No.763 of 2011 for amendment of written statement filed by him. The petitioner sought amendment on the ground that mistake has crept in in the written statement due to typographical errors and sought the following amendments:

1. To remove the word "Kiwapy;" in 4th line of the continuation of paragraph 7 in page 3;
2. To replace the word "mgfhpf;" in the 7th line of the continuation of paragraph 7 in page 3 by "Ml;nrgpf;" and also to remove the subsequent 8th and 9th lines;
3. To replace the word "kWf;fnt" in the 7th line of the 8th paragraph by the word "bgwnt";

3. The respondent in the counter affidavit denied all the averments made by the petitioner. According to the respondent, the petition is not maintainable, as the same has been filed when the suit is posted for arguments on behalf of the petitioner. By this amendment, the entire admission made by the petitioner in the written statement is changed.

4. The learned Judge considered all the materials on record and dismissed the application.

5. Against the order dated 05.01.2012 made in I.A.No.763 of 2011, the present civil revision petition has been filed by the petitioner.

6. The learned counsel appearing for the petitioner submitted that the amendment sought for is only to rectify the typographical errors and it does not change the cause of action, admission made by the petitioner and the nature of the suit.

7. The learned counsel appearing for the respondent submitted that the petitioner is seeking to resile from the admission

made in the written statement. The petitioner cannot withdraw the admission made in the written statement. The application is belated one and is filed when the suit is posted for arguments of the petitioner. By amendment, the entire admissions made in the written statement are changed.

8. Heard the learned counsel for both the sides and perused the materials on record.

9. A reading of the written statement and amendment sought for shows that words used in the written statement are only typographical errors and the same is evident, when the entire paragraph 7 of the written statement is read as a whole. In paragraph 2 of the written statement, he has stated that second defendant is not the sister of first defendant. According to the petitioner, in paragraph 7, a statement was made, that the second defendant is the sister of first defendant. Therefore, the amendment sought for by the petitioner in the written statement has not changed the nature of the suit. By this amendment, the petitioner is not withdrawing any admission made by the petitioner in the written statement. The learned counsel appearing for the petitioner referred

to relevant portion of the evidence of the petitioner and respondent and averments in paragraph 2, 7 and 8 of the written statement and contended that the findings of the learned Judge is that petitioner admitted that defendants 1 and 2 are brother and sister, but the same was denied in the cross examination. The said portion of the written statement and evidence has no relevance to the amendment sought for by the petitioner.

10. The contention of the learned counsel for the respondent that defendant can take an alternative plea, but cannot take inconsistent destructive plea has no relevance to the issue in the application. The learned Judge committed error in holding that by the amendment sought for by the petitioner, the character of the suit itself will be changed and application at belated stage is not maintainable. Considering the nature of the amendment sought for by the petitioner, the civil revision petition has to be allowed, by setting aside the impugned order of the learned trial Judge dated 05.01.2012.

V.M.VELUMANI, J.

gsa

11. Accordingly, the order in the I.A.No.763 of 2011 is set aside and this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

12.07.2017

Index : Yes/No

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To

The Sub Judge, Namakkal

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital of Ashoka at its base. The lion capital is flanked by two red horses. Below the lion capital is a red wheel (Chakras) and a red lotus. The entire emblem is set against a green background with a white border. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular path around the emblem. At the bottom, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is inscribed in Devanagari script.
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