

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2167 of 2009
and M.P.No.1 of 2009

Mallika

.. Petitioner

Vs.

1.The District Collector
Villupuram.

2.The Joint Directors
Head quarters Hospital
Villupuram.

3.The Chief Medical Officer
Govt. General Hospital
Gingee.

4.Dr.Durgabai
(retired) Govt. Doctor
Gingee.

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 20.01.2009 made in I.A.No.195 of 2008 in O.S.No.39 of 2005 on the file of the Subordinate Court, Gingee.

For Petitioner : Mr.V.Bhiman

For R1 to R3 : T.Jayaramaraj
Govt.Advocate (CS)
(vide Court order
dated 24.10.2017)

For R4 : Mr.M.R.Sivakumar

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 20.01.2009 made in I.A.No.195 of 2008 in O.S.No.39 of 2005 on the file of the Subordinate Court, Gingee.

2. Heard both sides and perused the materials on record.

3. The petitioner is the plaintiff and respondents are the defendants in O.S.No.39 of 2005. The petitioner filed the said suit for claiming compensation of Rs.5,00,000/-. According to the petitioner, even after family planning operation, she has conceived and delivered third child. In the plaint, she has stated that second child was born on '24.11.1994' instead of '13.04.1993' and operation was done on '01.12.1994' instead of '16.04.1993'.

Further, the date of the third child born after the operation was not mentioned in the plaint. The petitioner filed I.A.No.195 of 2008 for amendment of the plaint to substitute the date of birth of the child and date of operation as 24.11.1994 and 01.12.1994 respectively.

4. According to the petitioner, the mistake has crept in due to typographical error and prayed for amendment of the plaint.

5. The respondents filed counter affidavit and opposed the said application. According to the respondents, by the amendment, entire character of the suit will be changed and prayed for dismissal of the application.

6. The learned Judge, considering all the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application holding that the date of operation is important to decide the issue in the suit and the reason given by the petitioner that due to the typographical error, the mistake has crept in is not acceptable.

7. The amendment sought for by the petitioner is pre-trial

amendment. Any pre-trial amendment must be liberally considered by the Court. Only when an amendment, which will cause great prejudice to other side or will take all rights accrued to other party or if it is filed only to drag on the proceedings with malafide intention, amendment sought for can be rejected. In the present case, the petitioner is seeking amendment of date of birth of her child and date of operation and name of the child to be included.

8. According to the petitioner, it is only typographical error. She has stated in the plaint that second child was born on '24.11.1994' instead of '13.04.1993' and operation was done on '01.12.1994' instead of '16.04.1993'. This amendment will not change the character of the suit and will not introduce any new cause of action or new case. The petitioner made all required averments in the plaint and the respondents will not be prejudiced by amendment sought for by the petitioner. In view of the above, the learned Judge has committed irregularity in dismissing the application on the ground that the reason given by the petitioner is not acceptable.

9. For the above reason, the Civil Revision Petition is allowed

and the fair and decretal order dated 20.01.2009 made in I.A.No.195 of 2008 in O.S.No.39 of 2005 on the file of the Subordinate Court, Gingee, is set aside. As the suit is of the year 2005, the learned Trial Judge is directed to dispose the suit as expeditiously as possible, in any event not later than three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

26.10.2017

Index : Yes/No

dm/kj

To

1.The Subordinate Judge,
Gingee.2.The District Collector
Villupuram.3.The Joint Directors
Head quarters Hospital
Villupuram.4.The Chief Medical Officer
Govt. General Hospital
Gingee.

V.M.VELUMANI, J.

dm/kj



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