

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(PD) No. 3216 of 2016
and CMP No. 16302 OF 2016

Govindasamy

... Petitioner

Vs.

1. Arjunan
2. Panchalai
3. Chinnasamy
4. Palaniammal
5. Nagaraj
6. Palaniammal

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the Fair and Decreetal Order of the learned Subordinate Judge, Uthangarai dated 24.08.2016 in I.A. No. 207 of 2016 in O.S.No. 261 of 2014.

For Petitioner :
 For Respondents :

Mr.T.M.Hariharan
 Mr.P.Paramasivadoss

ORDER

The Revision Petitioner is the first defendant in a partition suit. During trial he marked as *WILL* as Ex.B-18. The plaintiff has filed a petition for amendment to the relief claimed in the suit seeking to declare the *WILL* as fabricated document and certain typographical errors in the pleadings. This amendment was opposed by the revision petitioner.

2. The Trial Court after considering the fact that the nature of suit will not be changed by amending the prayer and amendment sought for is not belated has allowed the petition. Further observed that the revision petitioner can avail the opportunity of filing additional written statement and additional evidence in this aspect. But the revision petitioner, having not satisfied has preferred the above revision.

3. Heard the submission.

4. The suit is for partition and the relief claimed in the suit remains unchanged. In order to get the right declared, the co-sharer, naturally seek to set aside the *WILL* which takes away his right.

5. By setting aside the same the rights will be confirmed on the other hand, the suit itself will become infructuous. In such circumstances it can be construed that the amendment will not change the nature of the suit. As discussed above the prayer for partition remains unchanged. Further the contention of the petitioner that there is a statutory bar for amending the prayer after commencement of trial is not sustainable, because the *WILL* came to be marked as Ex.B.18 only during the evidence of defendants. Therefore at the earliest opportunity the amendment is sought for by the plaintiff. By such amendment the rights of the defendant will not be prejudiced. As observed by the trial Court, additional written statement and additional evidence to prove the *WILL* can be availed by him. This Court has the discretion to permit amendments recording reasons for the same.

6. Considering the totality of the circumstances, his court of the view that the order passed by the Trial Court suffers no infirmity. The Civil Revision Petition merits no consideration. Accordingly, the Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed.

24.08.2017

Index : Yes/No
Internet : Yes/No

bsm

To
The learned Subordinate Judge,
Uthangarai.



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M.GOVINDARAJ, J.



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