

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3257 of 2012
and M.P.No.1 of 2012

C.Kuppusamy

.. Petitioner

Vs.

1.K.Sakthi Goutham
2.V.Kamalanathan
3.V.Pavathal
4.K.Sakthi Raghul
5.N.Vijayakumar
6.S.Rathinammal

M.Chenniappan (died)

7.K.C.Ramasamy
8.V.C.Baby
9.C.Devilakshmi

.. Respondents

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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 12.04.2012 made in I.A.No.34 of 2012 in O.S.No.69 of 2009 on the

file of the Principal District Court, Erode.

For Petitioner : Mr.M.V.Venkataseshan

For R1 : Mr.V.Lakshminarayanan

For RR2 to 4,

6 to 9 : No appearance

For R5 : Mr.S.Kaithamalai Kumaran

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 12.04.2012 made in I.A.No.34 of 2012 in O.S.No.69 of 2009 on the file of the Principal District Court, Erode.

2. The petitioner is eighth defendant, first respondent is the plaintiff and respondents 2 to 9 are the defendants 1 to 5, 7, 9 and 10 in O.S.No.69 of 2009. First respondent filed suit for partition originally against the respondents 2 to 7 and one Chenniappan. The respondents 2 to 5 filed written statement and are contesting the suit. Fifth respondent filed additional written statement. Pending suit, the said Chenniappan/sixth defendant died. The defendants 5, 8 to 10/petitioner, respondents 6, 8 and 9 fabricated the Will as though sixth defendant executed the Will in their favour. The petitioner filed O.S.No.763 of 2010 on the file of the District Munsif Court, Erode, against one Mohanasundaram on the ground that he

is interfering with his possession and for declaration that the Will alleged to have been executed by the sixth defendant/Chenniappan is genuine one and obtained collusive decree. The said collusive decree was registered on the file of the District Registrar, Erode. First respondent came to know about the decree in O.S.No.763 of 2010 after obtaining encumbrance certificate on 29.12.2011. According to the first respondent, he is not a party to O.S.No.763 of 2010, the said decree is not binding on him and he has right to ignore the same. In the circumstances, the first respondent filed the present I.A.No.34 of 2012 for amendment to include the above facts as averments in the plaint in O.S.69 of 2009 and it is necessary to be incorporated in the plaint.

3. The petitioner and respondents 5, 6, 8 and 9 filed counter affidavit opposing the said application. According to the petitioner, O.S.No.763 of 2010 and decree passed in the said suit are not relevant to the issue in the present suit. Amendment now sought for is barred by limitation.

4. The learned Judge after considering the averments made in the affidavit, counter affidavit and materials on record, allowed

the application holding that the first respondent must be given an opportunity to prove that the alleged Will executed by the sixth defendant/Chenniappan is not genuine and question of limitation can be decided only in the trial.

5. Against the order dated 12.04.2012 made in I.A.No.34 of 2012, the present civil revision petition is filed by the petitioner/eighth defendant.

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

7. From the materials on record, it is seen that the first respondent filed suit for partition. Pending suit, sixth defendant died. According to the petitioner, sixth defendant executed a Will dated 14.09.2009 bequeathing his property in favour of the petitioner. He filed O.S.No.763 of 2010 against one Mohanasundaram on the file of the District Munsif Court, Erode and got a decree that the Will executed by the sixth defendant in favour of the petitioner is genuine one. In view of the fact that the first respondent filed suit for partition, the issue whether sixth defendant executed a Will in favour of the petitioner and whether the same is genuine or not to be decided in order to properly

decide the issue of partition. The petitioner without knowledge and without impleading the first respondent filed suit against the said Mohanasundaram and obtained decree. Whether such decree is binding on the first respondent or not is also necessary issue to be decided in the present suit. The amendment sought for in the circumstances is necessary to decide the issue in the present suit in entirety. The question of limitation can be decided only in the conclusion of trial by appreciating the evidence let in by the parties. The petitioner will not be prejudiced as he has right to file additional written statement and disprove the claim of the first respondent.

8. The learned Judge considering all the above facts allowed the application permitting the first respondent to amend the plaint. I hold that there is no irregularity or illegality in the order of the learned Judge dated 12.04.2012 warranting interference by this Court.

9. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

21.07.2017

Index:Yes/No
kj

V.M.VELUMANI,J.

Kj

To
The Principal District Court, Erode.



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