

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2017

CORAM

THE HONOURABLE DR.JUSTICE P.DEVADASS

Civil Revision Petition No.3985 of 2012

1. Venkatesan
2. Punithavathi ... Petitioners

...vs...

1. Jayalakshmi
2. Thangamani
3. Thailammal Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decretal order dated 27.06.2012 passed in I.A.No.673 of 2011 in O.S.No.36 of 2009 on the file of the Sub Court, Mettur.

For petitioners : Mrs.P.Mani
For RR1 & 2 : Mrs.R.Meenal
For R3 : No Appearance

O R D E R

This Civil Revision Petition arises out of the dismissal of I.A.No.673 of 2011 in O.S.No.39 of 2009 by the learned Sub Judge, Mettur, Salem District.

2. The plaintiffs 1 and 2 who are the respondents 1 and 2 in the said I.A.No.673 of 2011, sought for partition and certain other reliefs. They pleaded that they are the wife and daughter of late Natesan. Jayalakshmi is the first plaintiff, who pleaded that late Natesan while alive, married her for second time after the death of his first wife. Thus, they are the legal heirs of late Natesan, whereas, defendants 1 and 2 denounced her plea. However, defendants have pleaded in their written statement that they are the only legal heirs of late Natesan.

3. Subsequently, the defendants have filed I.A.No.673 of 2011 seeking leave of the court to file additional written statement with the additional plea that the plaintiffs have stealthily got recorded their names in the service records of late Natesan. The trial court has dismissed the said application on the ground that it is belated and it is also setting up of a

new case. The additional ground raised is mutually contradictory and moreover, the plaintiffs' evidence is also over.

4. The learned counsel for the revision petitioners would contend that what was raised in the additional written statement is in furtherance of the plea already raised in the main written statement. Nothing new has been added and there is no question of raising mutual contradictory pleadings. In such circumstances, the refusal of the leave to file additional written statement, is not in accordance with law.

5. The learned counsel for the respondents / plaintiffs would repel him.

6. I have considered the rival submissions, and perused the impugned order and the materials on record.

7. Wife of late Natesan also died. Plaintiffs are fighting for their legal status to late Natesan. They have to establish the same, it will have its repercussion in the property left by late Natesan.

8. Natesan left this world after leaving the petitioners and respondents 1 and 2. In their written statement, the defendants pleaded that the first plaintiff and their father Natesan, have no valid legal relationship and they are not his legal heirs and thus disputes the legal status claimed by 1st plaintiff. Suit was put on trial. Evidence was let in.

9. At this juncture, the defendants have filed the additional written statement, furnishing certain additional pleadings to the effect that the first plaintiff maneuvered to brought on the service record of Natesan her name when her legal status is in issue. If one reads the material proposition of facts pleaded in the main written statement and in the present additional written statement, additional written statement is in the nature of adding flavour to the main plea and its is in furtherance of their main plea. Actually, the present contention is based on the records. Thus through the additional written statement no contradictory plea is putforth by the defendants. It is not a new plea.

10. Plea of delay is a technical plea. Some relevant plea is sought to be raised. It is proved it will also enable the Court to take a correct view in the controversy between both sides. Technicality shall not be allowed to defeat justice.

11. Thus the impugned order is flawed. In view of the foregoing, it is ordered as under:

(i) this Civil Revision Petition succeeds.

- (ii) The impugned order passed by the learned Sub Judge, Mettur, Salem District in I.A.No.673 of 2011 in O.S.No.39 of 2009 is set aside.
- (iii) I.A.No.673 of 2011 stand allowed
- (iv) The trial court shall receive the additional written statement on record.
- (v) Liberty shall be given to the respondents / plaintiffs to file their reply statement, if any.
- (vi) The learned Sub Judge, Mettur, Salem District shall dispose of the suit within 2 month, from the last date of filing reply statement, if any filed by the plaintiffs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

pvs

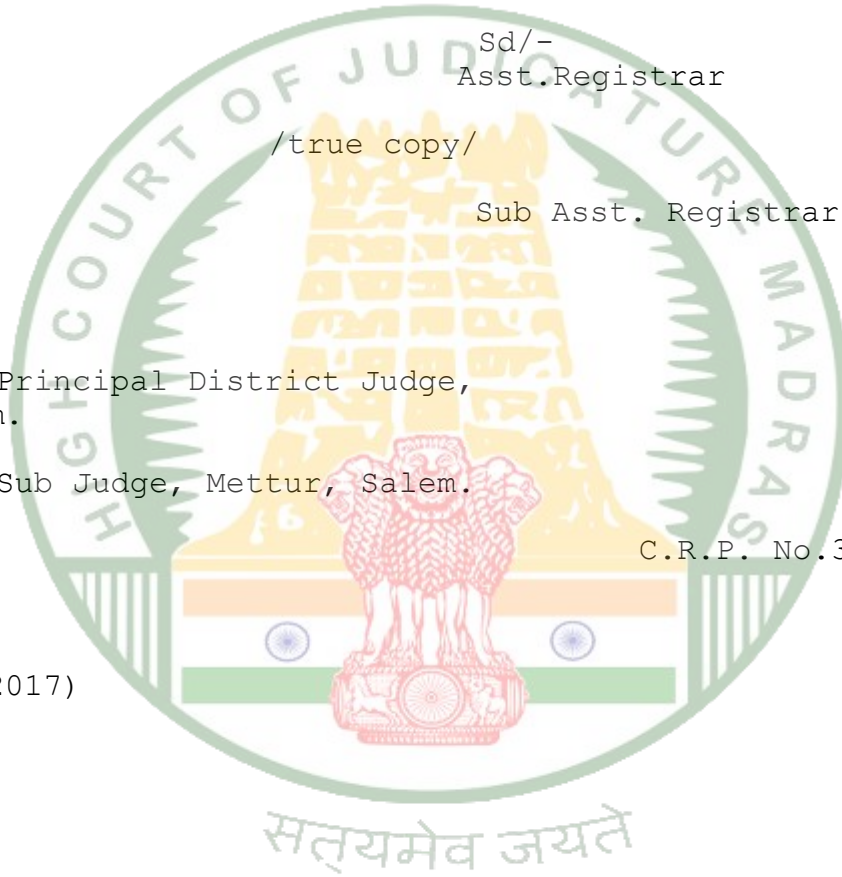
To

(1)The Principal District Judge,
Salem.

(2)The Sub Judge, Mettur, Salem.

C.R.P. No.3985 of 2012

NR II (CO)
VR (06/04/2017)



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