



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

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C.R.P(MD)No.339 of 2017 (PD)

and

C.M.P(MD)No.1687 of 2017

Kuttiyammal

....Petitioner/Petitioner/Plaintiff

Vs.

1.Arumugaraj

2.Murugaiah

3.Saraswathi

....Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the order, dated 08.11.2016 made in I.A.No.276 of 2016 in O.S.No.103 of 2015, on the file of the Learned Additional Sub Court, Tenkasi by allowing this Civil Revision Petition.

For Petitioner : Mr.N.Ramesh Arumugam

ORDER

The petitioner has filed this Civil Revision Petition to set aside the order, dated 08.11.2016 made in I.A.No.276 of 2016 in O.S.No.103 of 2015, passed by the Learned Additional Sub Court, Tenkasi.

2.The petitioner is the plaintiff. The respondents are the defendants. The petitioner filed suit in O.S.No.103 of 2015 for partition in respect of the suit schedule property. The respondents filed written statement and are contesting the suit. Trial Commenced. The petitioner filed proof affidavit and the suit was posted for cross-examination by the respondents. At that time, the petitioner filed I.A.No.276 of 2016 for amendment of the plaint for deleting the third item in third schedule property and to add 7th schedule for including another property. According to the petitioner, she came to know only after commencement of trial that 3rd item in the 3rd schedule of property was sold by her father while he was alive in the year 1995 itself to one Paramasivan her paternal uncle. Her father purchased the property from one Eswari Ammal and constructed houses from and out of joint family proceeds now sought to be included in the plaint as 7th schedule.

3.The respondents opposed the said application and submitted that they filed written statement in the year 2015 itself stating that 3rd schedule property was sold by their father in the year 1995 itself. Their father by un-registered Will, dated 29.01.2007 bequeathed all his property to the respondents. After



one year of filing written statement and after commencement of trial, petitioner filed an application for amendment to include one of the properties mentioned in the Will, dated 29.01.2007. The petitioner has not given valid reason for amendment of plaint after commencement of trial.

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4.The learned Judge considering the averments made in the written statement, affidavit and counter affidavit and judgments relied on by the learned counsel for the respondents, dismissed the application holding that the petitioner has not given any reason for delay from the date of filing of written statement and after commencement of trial.

5.Against the said order of dismissal made in I.A.No.276 of 2016, the petitioner has come out with the present Civil Revision Petition.

6.I have heard the learned counsel appearing for the petitioner and also perused all the materials available on record.

7.From the materials on record, it is seen that the respondents have opposed the application for amendment on the ground that the written statement filed by them in the year 2015 itself and stated about the sale of the 3rd item in the 3rd schedule to the suit property by their father in the year 1995 and also mentioned about the Will, dated 29.01.2007 whereby their father bequeathed all his property including the suit property now sought to be mentioned as 7th schedule to the respondents. The petitioner has not denied this contention of the respondents. The petitioner has not explained as to why she has not filed an application for amendment immediately after filing of the written statement before the commencement of trial. As per Order 6 Rule 17 of C.P.C., amendment after commencement of trial can be ordered only if party proves that inspite of due diligence she could not have filed an application for amendment before commencement of trial. The petitioner has not stated that inspite of due diligence she could not file amendment before commencement of trial. In the circumstances, the learned Judge has rightly exercised his power conferred on him and there is no illegality or irregularity warranting interference by this Court.

8.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/
Assistant Registrar(CS-II)

/True Copy/



To

The Additional Subordinate Judge,
Tenkasi.

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Copy to:

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High court,
Madurai.

+1CC to M/S. M.S.Jeya Karthik, Advocate, SR.No. 9938

C.R.P (MD) No.339 of 2017 (PD)
22.02.2017

AM

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