

THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

C.R.P.No.779 of 2017

ORDER

With the consent of both the learned counsel, this revision petition is taken up for disposal at the stage of admission.

2. This revision is directed against the order dated 21.11.2014 passed in I.A.No.89 of 2009 in O.S.No.63 of 2007 by the learned Senior Civil Judge, Rajam.

3. The facts, in brief, are that the respondent/plaintiff herein is the daughter of petitioner/defendant. The marriage between the defendant and the mother of plaintiff was performed in the year 2010. The mother of plaintiff was the absolute owner of the plaint schedule property, which is said to be a residential house. On 12.04.2007, the mother of plaintiff died allegedly due to the harassment and ill-treatment caused to her by defendant. After her death, the defendant is trying to grab the property and dispossess the plaintiff from the plaint schedule property. Hence, the plaintiff filed suit in O.S.No.63 of 2007 on the file of Senior Civil Judge, Rajam, for permanent injunction, against the defendant. It is stated that during pendency of suit, while searching almirahs, the maternal grand mother of plaintiff found the document dated 22.11.2006 got executed by the mother of plaintiff. Therefore, the respondent/plaintiff filed I.A.No.89 of 2009 in O.S.No.63 of 2007

under Order 6 Rule 17 and Section 151 of C.P.C., to amend the
plaint by incorporating paragraph III (d), which is as follows:

“The deceased Swapna during her life executed an
unregistered Will dated 22.11.2006 in a sound disposing state of
mind that her properties shown in the plaint schedule got by her
under registered sale deed dated 15.03.2000 and the property
situated in Srikakulam got by her under a registered sale deed
dated 13.02.1998 along with the plaint schedule property shall
absolutely devolve on her only daughter who is the minor plaintiff
herein and as per the Will her daughter Karishma will got absolute
rights in respect of the above mentioned properties mentioned in
the will dated 22.11.2006”.

By the order impugned, the trial Court allowed the said I.A.
Challenging the same, the petitioner/defendant filed the present
revision.

4. Heard learned counsel for petitioner and learned counsel for
respondent.

5. Learned counsel for petitioner/defendant contended that the
amendment sought by respondent/plaintiff is contrary to the
pleadings and documents and therefore, the trial Court erred in
allowing the impugned application.

6. On the other hand, learned counsel for respondent/plaintiff
submits that the Court below has considered the application in
proper perspective and the impugned order needs no interference
by this Court.

7. The suit is filed for injunction simplicitor. Though it is open to the plaintiff to amend the pleadings in view of subsequent developments, by amendment, the nature of suit cannot be altered altogether without there being consequential amendment with regard to prayer. The proposed amendment does not pertain to the relief of declaration declaring the respondent/plaintiff as owner of suit schedule property. Therefore, without seeking the relief of declaration, the petitioner cannot seek for amendment of the plaint, as such, the proposed amendment sought by petitioner by incorporating the aforesaid paragraph cannot be permitted. However, it is open to the respondent/plaintiff to seek appropriate amendment with regard to conversion of suit from injunction simplicitor to the one for declaration.

8. In view of the above, the Civil Revision Petition is allowed, setting aside the order impugned. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.S.K. JAISWAL, J.

21st March, 2017
sj