

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

C.R.P.(PD).No.2828 of 2011

and

C.R.P.(PD).No.900 of 2011

and

M.P.No.1 of 2011

1. Karthikeyan
2. Sundaramurthy
3. G.R.Palanisamy

... Petitioners in both C.R.Ps.

Vs

1. Thangamani
2. Vijayarasu @ Murugesan
3. Poonkodi

... Respondents in both C.R.Ps

Common Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 03.12.2010 and 24.11.2010 passed in I.A.No.1007 of 2010 in O.S.No.449 of 2004 passed on the file of the District Munsif's Court, Gobichettipalayam.

For Petitioners
For Respondents

: Mrs.R.Meenal
: Mr.R.T.Doraisamy

COMMON ORDER

The defendants 2 to 4 in O.S.No.180 of 2001 on the file of Sub-Court,

Gobichettipalayam which was since transferred to the District Munsif, Gobichettipalayam and pending on its record as O.S.No.449 of 2004, have come forward with these revision petitions. The set of facts that led to the filing of these petitions is now required to be introduced:

- The plaintiffs have laid the suit for partition contending that they are co-sharers along with the defendants. Subsequently, they had filed I.A.No.1445 of 2008, for amending the prayer from one of partition to delivery of possession of the suit properties. The body of the plaint however remained untouched. To state it with little elaboration, the body of the plaint says that parties are co-sharers, but the prayer sought through amendment is for delivery of possession of the suit property to the exclusion of the defendants in the suit. This was allowed by the trial court.

Note: Though only facts-narration is underway, still this Court finds it hard to contain itself from entering an observation that this has been recklessly done, and the trial court has taken zero pains to ascertain whether the amended-prayer fits in with the facts on which the cause of action for the suit is founded.

- Thereafter, the plaintiffs filed I.A.No.32 of 2010, for amending the provision for paying court fee in the plaint from one under Section 37(2) of the Tamil Nadu Court-Fees Suits Valuation Act, (herein after referred to as the Court fees Act) to Section 50(3) of the same Act.

This was dismissed by the trial court, challenging which the plaintiffs have approached this Court in C.R.P.(PD).No.1874 of 2010. As to be expected this was dismissed. In its order, this Court brought out the distinction between the cases where Sec. 30 and Section 50 of the Court Fees Act would apply, and has held that given the nature of amended prayer only Sec. 30 of the Court Fees Act would apply.

- Thereafter, the plaintiff had filed I.A.No.1007 of 2010, this time, for amending the provision for payment of court fee from Sec.37 to 25(a). Shockingly this was allowed by the trial court on payment of cost on 24.11.2010.
- Challenging the order allowing the amendment, the defendants have preferred C.R.P.(PD).No.900 of 2011 and as against the order of cost, they have preferred C.R.P.(PD).No.2828 of 2011.

2. Heard Mrs.R.Meenal, learned counsel for the petitioners and Mr.R.T.Doraisamy, learned counsel for the respondents.

3. The learned counsel for the petitioners submitted that if the correctness of the amended prayer, by which prayer seeking partition was substituted by one seeking delivery of property, is kept a constant, this Court had indicated in its Order in C.R.P.(PD).No.1874 of 2010, that the correct provisions under

which court fee has to be paid is one under Section 30, and hence, to let the plaintiff pay the court fee under Sec. 25(a) is impermissible and goes against what this court has directed.

4. Per contra, the learned counsel for the respondents/plaintiffs would argue that since the filing of the suit, the defendants have dispossessed the plaintiffs which necessitated the plaintiffs to seek prayer for recovery of possession. There then also arose a necessity to amend the provision under which court fee is required to be paid. While the former was addressed when I.A.No.1445 of 2008 was ordered, the latter was omitted, may be by inadvertence. This alone is now sought to be corrected.

5. As this Court perused the papers, it brought to light certain fundamental incongruities, if not incompatibilities, first between the body of the plaint on which the cause of action for the suit is based and the amended-prayer, and second between the amended prayer and the court fee payable.

6. This Court holds that, both the counsel for the petitioner before the trial court, as well as its presiding officer are responsible for the present situation. Facts are not required to be restated. If the statement of the respondent's counsel that the amendment of prayer was necessitated (in the suit where the body of the plaint narrates a case for partition) because the plaintiffs have been dispossessed during the pendency of the suit is to be trusted, then the counsel for the plaintiff has lost his way straight away. The

fundamentals of civil law and practice that hitherto occupied the legal space is instantly sought to be replaced by a strategy that will petrify the law-knowing. Should not the counsel ask himself a question if a prayer for recovery of possession can be sustained by a pleading for partition? Aghast, the trauma does not end there. The trial judge would now participate in what this Court would term as fundamental recklessness reflected by lack of judicial attentiveness in deciding the cause before him, when it allowed the amendment.

7. In phase two, the counsel for the plaintiff and the Court team up to derail law yet again. Rightly or wrongly, the prayer has been amended as one for delivery of possession. Is it not a rudimentary exercise to refer to the right provision in the Court Fee Act that matches the prayer sought? The counsel for the plaintiffs appears to be determined not to refer it even after this court has tendered an advice to him when it pointed out the right provision under which court fee must be paid in its Order in C.R.P.(PD).No.1874 of 2010. This court told the plaintiff to pay court fee under sec.30 of the court fee act, but fee is now sought to be paid under sec.25(a). The plaintiffs have now come forward with I.A.No.1007 of 2010 for amending this. And, this was allowed too. What a terrible advertisement for the efficiency of our legal system?

8. A reading of the affidavit filed in support of I.A.No.1007 of 2010, it first

introduces a paragraph in the plaint impugning a Will alleged to have been executed by the first defendant, who appeared to have died during the pendency of the litigation in favour of the other defendants as invalid and then go to 17th paragraph to bring about suitable changes in the cause of action and then seek amendment to the Court Fees column for substituting Section 37(2) with 25(a). What is of interest to note here is that even as the plaintiffs seek to challenge a Will alleged to have been executed by the first defendant in favour of the other defendants, the same would have little effect on his original contention that he is a co-sharer of the property. In other words, after conceding that the first defendant is entitled to some share in the suit property, the genuineness or otherwise of the Will which the first defendant is said to have executed may be of concern only to his heirs in law, and unless the plaintiff is also one of the heirs of the first defendant, it may not impact his right as a co-sharer. If the plaintiffs were to continue only as a co-sharer of / with the defendants, then seeking a relief of declaration and possession would run counter to the very character of the suit.

9. As things now stand, the prayer will not support the facts pleaded in the plaint, and the Court fee does not support the prayer sought. For the present, this Court is concerned with the latter. The approach of the trial court in deciding I.A.No.1007 of 2010 is an invitation to this Court to interfere with it. The said order is liable to be set aside.

10. A case-study of this case by the trial courts across the State will inform them of the extent of responsibility that they ought to assume, and help them realise that in the process of justice-dispensation no stage can be considered less important, and no application can be treated as insignificant. Judge's responsibility is incredibly taxing and he is ill afford to relax when on job. Camouflaged amidst the serious stuff, there would appear elements in a case that would distract him into a easier path. With a smile at such attempts, he shall stay focused on his job. There can always be a bonafide errors in judgment, but that cannot be extended to missing elementary principles of law and practice. He should remember that he is a soldier on guard of justice and that he shall never fail.

11. In the result C.R.P.(PD).No.2828 of 2011 and C.R.P.(PD).No.900 of 2011 are allowed and the order of the District Munsif Court, Gobichettipalayam in I.A.No.1007 of 2010 in O.S.No.449 of 2004 is set aside. No costs.

सत्यमेव जयते

27.04.2018

Index:Yes/No

Internet:Yes/No

Speaking/Non-Speaking Order

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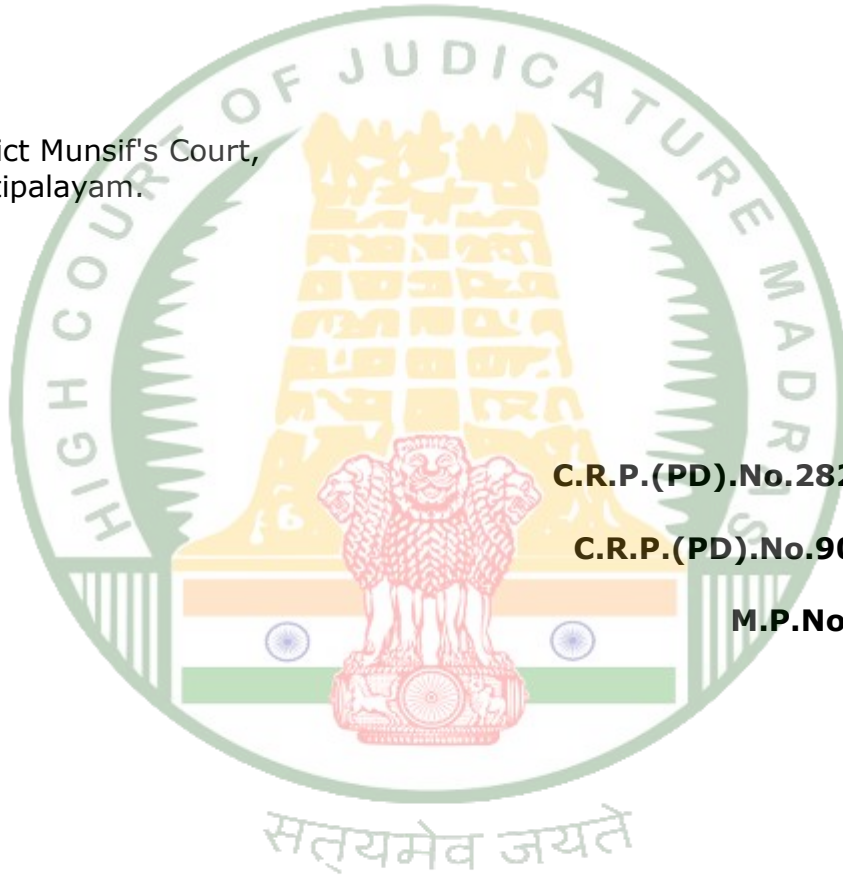
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N.SESHASAYEE, J.,

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To

The District Munsif's Court,
Gobichettipalayam.



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