

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.781 of 2015
& M.P.No.1 of 2015

Dhanalakshmi

.. Petitioner

Vs.

1.Thambana Gounder

2.Poosarajan

3.The Branch Manager
State Bank of India
B.P.Agraharam Branch
Erode-5.

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 03.12.2014 made in I.A.No.388 of 2014 in O.S.No.384 of 2012 on the file of the I Additional Subordinate Court, Erode.

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For Petitioner : Mr.A.K.Kumaraswamy

For R1 and R2 : No appearance

For R3 : Mr.P.Elayaraj Kumar
for M/S.Ramalingam and Associates
ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 03.12.2014 made in I.A.No.388 of 2014 in O.S.No.384 of 2012 on the file of the I Additional Subordinate Court, Erode.

2. The petitioner is plaintiff and respondents are the defendants in O.S.No.384 of 2012 on the file of the I Additional Subordinate Court, Erode. The petitioner filed said suit for partition and for permanent injunction restraining the third respondent from bringing the entire suit properties for sale till final decree is passed. The third respondent filed written statement on 06.06.2013 and is contesting the suit. Trial commenced. The petitioner filed I.A.No.388 of 2014 under Order VI Rule 17 read with Section 151 of C.P.C. for amendment of plaint.

3. According to the petitioner, she claimed share in the suit property as coparcener as per the amendment Act, 1 of 2005. According to her, she got married only on 04.06.1992 and as per the Act, 1 of 1990, as unmarried daughter, she has become coparcener along with the respondents 1 and 2 and she is entitled to share in the suit property.

4. The respondents 1 and 2 were set exparte. The third respondent filed counter affidavit and opposed the said application. The third respondent contended that the petitioner has given different age at every stage of the proceedings and the petitioner in collusion with the respondents 1 and 2 filed suit to defeat the interest of the third respondent. First respondent as kartha of the family executed a settlement deed dated 28.04.2005 in favour of the second respondent. Second respondent borrowed a loan from the third respondent on 28.11.2005 on the security of the suit property. Act 35 of 2005 came into force only on 09.09.2005 and the settlement deed was executed prior to the Act came into force. Already, the petitioner filed three applications in I.A.No.703 of 2014 for reopening the case, I.A.No.704 of 2013 for recalling P.W.1 and I.A.No.705 of 2013 for marking of the document, when the suit was posted for arguments. All the three applications were allowed. When the suit was posted for arguments, second time the petitioner filed another I.A.No.326 of 2014. Again the petitioner has come out with the present application to amend the plaint only to defeat the interest of the third respondent from recovering amount dues and payable by the second respondent.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application.

6. Against the said order of dismissal dated 03.12.2014 made in I.A.No.388 of 2014, the present Civil Revision Petition is filed by the petitioner/plaintiff.

7. Heard the learned counsel for the petitioner as well as the third respondent. Though notice was served on the respondents 1 and 2 and their names are printed in the cause list, there is no representation on behalf of them either in person or through counsel.

8. From the materials on record, it is seen that the petitioner is claiming share in the suit property as coparcener. The petitioner has pleaded in the plaint that settlement deed executed by the first respondent in favour of the second respondent is not binding on her. The petitioner now seeks to amend the plaint to include that she was married only on 04.06.1992 and she is entitled to claim her share as per the Act 1 of 1990. From the averments made in the

affidavit filed in support of the application, it is seen that the petitioner is seeking amendment to clarify her statement that as per the Amendment Act, 1 of 1990 also, she has become coparcener.

9. A Division Bench of this Court in the judgment reported in **2004 (3) MLJ 620 (Alamelu Ammal and others v. Tamizh Chelvi and others)**, held that an unmarried daughter becomes coparcener as per the amended Act, 1 of 1990. In view of the said judgment, in the interest of justice, the petitioner must be given an opportunity to prove that she was not married when Amendment Act, 1 of 1990 came into effect, she has become coparcener by the said Act also.

10. For the above reason, impugned order of the learned Judge dated 03.12.2014 made in I.A.No.388 of 2014 is set aside and the Civil Revision Petition is allowed. It is open to the third respondent to file additional written statement. No costs. Consequently, connected Miscellaneous Petition is closed.

05.01.2018

Index : Yes/No
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V.M.VELUMANI, J.

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To

I Additional Subordinate Judge, Erode.



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