

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	28.08.2018
Pronounced on	11.09.2018

Coram

The Honourable Ms.Justice P.T.ASHA

**C.R.P(PD)No.3964 of 2010
and
M.P.No.1 of 2010**

Sivakami

...Petitioner

Versus

1.Jayakodi
2.Poongathai
3.Saradha Devi
4.Vimala
5.Viswanathan
6.K.R.Palanisamy
7.Manickavasagam
8.Thangavel
9.Subramaniam
10.Govindammal

...Respondents

This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order dated 09.08.2010 made in I.A.No.513 of 2010 in O.S.No.50 of 2009 on the file of the Sub-Court, Perundurai by allowing the Civil Revision Petition.

For Petitioner : Mr.N.Manokaran

For Respondents -1 to 8 : Mr.S.Kaithamalai Kumaran

Respondents 9 & 10 : No Appearance

ORDER

This Civil Revision Petition is filed challenging the order of the learned Subordinate Judge, Perundurai dated 09.08.2010, in I.A.No.513 of 2010 in O.S.No.50 of 2009, in and by which the learned Judge had dismissed the Interlocutory Application to amend the plaint.

2. A brief resume of the facts necessary for the disposing of this revision petition is narrated hereinbelow:

(a) The revision petitioner has filed the Suit in O.S.No.243 of 2005 on the file of the Subordinate Judge's Court, Erode. This suit was later transferred to the Subordinate Judge's Court, Perundurai and renumbered as O.S.No.50 of 2009. The revision petitioner had prayed for a partition and separate possession of her 1/5th share in the suit properties, a final decree in terms of the preliminary decree and an injunction restraining the respondents from alienating or encumbering the suit properties including the revision petitioner's share.

(b) The revision petitioner had come forward with a case that the suit properties were the self acquired properties of her father Ramasamy Gounder. She had four brothers viz.,

Somasundaram, the husband of first respondent and father of respondents 2 to 5, K.R.Palanisamy, K.R.Manickavasagam and K.R.Thangavel, respondents 6 to 8 herein. That her father died in the year 1980, intestate followed by her mother, Venkatalakshmi who died in the year 2003, also intestate. That on the death of the parents each of the revision petitioner's siblings and herself become entitled to an 1/5th share with the respondents 1 to 5 getting the 1/5th share of Somasundaram.

(c) She would further contend that the eighth respondent had attempted to mortgage the suit properties to obtain a loan from the Union Bank of India. On coming to know of this move, she had addressed letters to the Bank and the eighth respondent. The Bank did not respond though they received the notice and the eighth respondent refused to receive the notice. The revision petitioner also came to learn (while the suit was pending) that the husband of the first respondent and father of respondents 2 to 5, Somasundaram & respondents 6 to 8 had jointly sold a portion of the suit property to the respondents 9 & 10. This deed dated 14.11.1996 is not true and genuine. No sale consideration passed under this document nor was possession handed over. Respondents 9 & 10 were impleaded later. Left with no other alternative, the revision petitioner has filed the suit.

(d) The eighth respondent filed a written statement which was adopted by respondents 1 to 7 denying the description of properties and stating that the revision petitioner was including a property in S.F.No.135 (corresponding to R.S.No.37/4) measuring 3.85 Acres which did not belong to their father. S.F.No.73 (corresponding to R.S.Nos.80/1 & 80/2) was also not belonging to their father which meant that the schedule described in the plaint was erroneous. After the death of their father, there was a family arrangement between the revision petitioner and her brothers and on 26.07.1989, the revision petitioner executed a release deed in favour of her brothers. The revision petitioner cannot therefore claim any right over the suit properties. In these circumstances, they sought for a dismissal of the suit.

(e) In her reply, the revision petitioner denied executing the release deed and contended that this document is a forged and fabricated one.

(f) After trial in the case was concluded and the suit posted for arguments, the revision petitioner came forward with the impugned Application to amend the suit schedule. In the affidavit filed in support of the Application, the revision petitioner has stated the following, which according to her, has prompted

her to file the impugned Application.

"I have furnished the description of the properties to my level best. But the respondents have contended that the survey numbers as well as the boundaries are not properly given and that therefore proper adjudication cannot be given in the above matter since it is filed for partition and separate possession. Under the circumstances, I have to amend the 1st item of the suit properties by deleting the existing 1st item of the suit properties. The amendment sought for will not change the nature and character of the suit and the respondents will not prejudice in any way in view of the amendment now sought for by me."

(g) In their counter affidavit, respondents 1 to 5 & 7 to 8 had *inter alia* contended that the petitioner had earlier filed an amendment Application and the same was allowed and the amendment that is now sought was only to drag on the proceedings. It was their case that even as early as in the year 2005, they have clearly pointed out the discrepancy and no steps were taken immediately and thereafter, she had filed an amendment Application in which also she did not seek to amend the description. The respondents went on to contend that the revision petitioner's only attempt was to fill up the lacuna elicited during the cross examination.

(h) The learned Subordinate Judge, Perundurai proceeded to dismiss the said Application on the ground that the amendment was a post trial one and could not be allowed and further the revision petitioner had not pleaded or let in evidence to show that despite due diligence the facts that she was now trying to include was not within her knowledge. Aggrieved by this order, the revision petitioner is before this Court.

3. Heard Mr.N.Manoharan, learned counsel for petitioner and Mr.S.Kaithamalai Kumaran, learned counsel for respondent 1 to 8.

4. Mr.N.Manoharan, learned counsel for petitioner argued that the learned Judge ought to have adopted a more liberal approach considering the fact that the litigant was a poor illiterate widow. In support of his arguments, the learned counsel for the petitioner would rely on the following judgments:

- ***Mohinder Kumar Mehra Vs. Roop Rani Mehra and Others*** reported in ***(2018) 2 SCC 132***
- ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Others*** reported in ***2018(11) SCC 722***

5. Mr.S.Kaithamalai Kumaran, learned counsel appearing on behalf of respondents 1 to 8 would argue that by allowing the amendment all that the respondents have elicited in the cross examination of the revision petitioner as P.W.1 would be set at naught and the revision petitioner would effectively fill up the lacuna.

6.1. Heard counsel on either side. It is seen that even as early as on 09.12.2005, the respondents have brought to the notice of the revision petitioner that the description of the properties given in the suit schedule was erroneous and that properties not belonging to their father had been included. After the filing of their written statement in the year 2007, the respondents have filed a reply statement and in that year she has also filed an Application to implead the respondents 9 & 10 herein. Even in the affidavit filed in support of the impugned Application, the revision petitioner does not state that despite exercising due diligence, these facts were not known to her but on the contrary, she would state as follows:

"I have furnished the description of the properties to my level best. But the respondents have

contended that the survey numbers as well as the boundaries are not properly given and that therefore proper adjudication cannot be given in the above matter since it is filed for partition and separate possession. Under the circumstances, I have to amend the 1st item of the suit properties by deleting the existing 1st item of the suit properties. The amendment sought for will not change the nature and character of the suit and the respondents will not prejudice in any way in view of the amendment now sought for by me."

6.2. Further this amendment is sought to be introduced after the suit was posted for arguments. **Mohinder Kumar Mehra Vs. Roop Rani Mehra and Others** reported in **(2018) 2 SCC 132** is a case where the amendment Application was filed prior to the trial and taken up subsequently, the Hon'ble Supreme Court held as follows:

"22. The proviso to Order 6 Rule 17 CPC prohibited entertainment of amendment application after commencement of the trial with the object and purpose that once parties proceed with the leading of evidence, no new pleading be permitted to be introduced. The present is a case where actually before parties could lead evidence, the amendment application has been filed and from the order dated 14.02.2014, it is clear that the plaintiff's case is that

parties has led evidence even on the amended pleadings and the plaintiff's case was that in view of the fact that the parties led evidence on amended pleadings, the allowing of the amendment was a mere formality. The defendant in no manner can be said to be prejudiced by the amendments since the plaintiff led his evidence on amended pleadings also as claimed by him."

7. However, in the case on hand, the Application for amendment has been filed only when the case was posted for arguments. Therefore, the ratio laid down in the case of **Mohinder Kumar Mehra Vs. Roop Rani Mehra and Others** reported in **(2018) 2 SCC 132** *supra* will not come to the rescue of the revision petitioner. As regards the case **Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Others** reported in **2018(11) SCC 722**, the same will also not come to the aid of the revision petitioner as the Application was moved after the framing of issues but ultimately dismissing it only on the ground of delay of 27 years after the assignment in favour of the third respondent therein. This decision will also not advance the case of the revision petitioner.

8. The language of the proviso to Order VI Rule 17 C.P.C clearly prohibits the entertainment of an amendment Application after the commencement of trial, such an embargo has been envisaged to prevent any new pleadings being introduced after evidence is let in by the parties and the other party being put to a disadvantage. Therefore, in view of the above settled position, I find no infirmity in the order passed by the learned Subordinate Judge, Perundurai.

9. In the result, this Civil Revision Petition is dismissed and the order passed by the learned Subordinate Judge, Perundurai in I.A.No.513 of 2010 in O.S.No.50 of 2009 dated 09.08.2010 is confirmed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

सत्यमेव जयते

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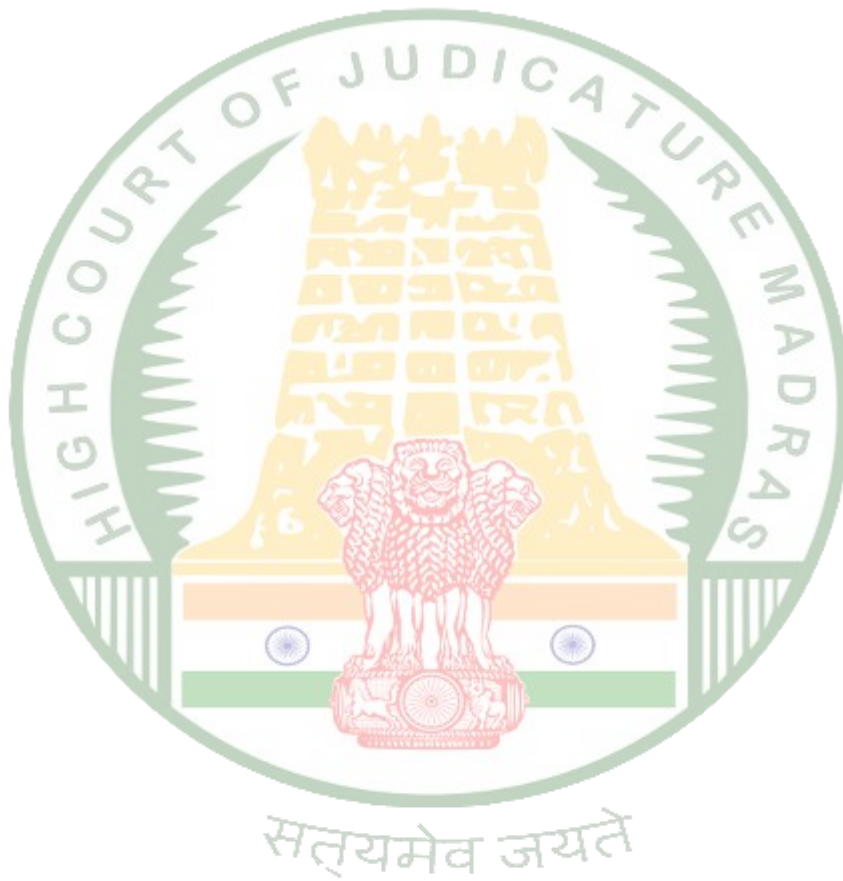
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Index : Yes / No

Speaking Order/Non-Speaking Order

To

The Sub-Court,
Perundurai.



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P.T.ASHA, J.,

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Pre-Delivery Order in
C.R.P(PD)No.3964 of 2010

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