



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.07.2018

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THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(MD)No.1439 of 2018
and

C.M.P.(MD)No.6215 of 2018
and

C.R.P.(MD)No.2172 of 2017
and

C.M.P(MD)No.10680 of 2017

C.R.P.(MD)No.1439 of 2018:-

Joint Family Manager Poochi @ Savarimuthu,
S/o. Late.Arockiyam ... Petitioner/Petitioner/Plaintiff

Vs.

1.Joseph, S/o.Arulappan
2.Pathiyanathan, S/o.late.Selvaraj
3.Savarimuthu, S/o.late.Selvaraj
4.Arockiyasamy, S/o.late.Savarimuthu ... Respondents/Respondents/
Defendants

Prayer:- This Civil Revision Petition is filed under Article 227 of the Constitution of India, seeking to set aside the fair and decretal order dated 26.04.2018, made in I.A.No.287 of 2018 in O.S.No.516 of 2010 on the file of the Additional District Munsif Court, Manapparai.

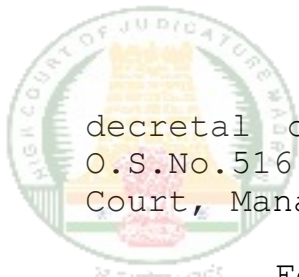
For Petitioner : Mr.G.Sridharan

C.R.P.(MD)No.2172 of 2017:-

Family Manager Vellaikkal Poochi @ Savarimuthu,
S/o. Late.Arockiyam ... Petitioner/Petitioner/Plaintiff

Vs.

1.Joseph, S/o.Arulappan
2.Pathiyanathan, S/o.Late.Selvaraj
3.Savarimuthu, S/o.Late.Selvaraj
4.Arockiyasamy, S/o.Late.Savarimuthu ... Respondents/Respondents/
Defendants



decretal order dated 12.09.2017, made in I.A.No.309 of 2017 in O.S.No.516 of 2010 on the file of the Principal District Munsif Court, Manapparai and allow this Civil Revision Petition.

For Petitioner : Mr.G.Sridharan
For Respondents : No Appearance

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COMMON ORDER

The revision petitioner has filed C.R.P.(MD)No.2172 of 2017 against the fair and decretal order, dated 12.09.2017, passed in I.A.No.309 of 2017 in O.S.No.516 of 2010. The said application was filed for amendment of the plaint and the same was dismissed by the learned Principal District Munsif (FAC), Manapparai. In the said Civil Revision Petition, notice was ordered and the respondents were served and their names were printed in the cause list. Due to dismissal of the said amendment petition, the petitioner has filed another application in I.A.No.287 of 2018 under Order 23 Rule 3 of C.P.C., seeking to permit him to withdraw the suit with liberty to file a fresh suit on the same cause of action. The said application was also dismissed by the learned Additional District Munsif, Manapparai, vide order dated 26.04.2018. Aggrieved over the same, the petitioner has filed C.R.P.(MD)No.1439 of 2018.

2.When C.R.P.(MD)No.1439 of 2018 was taken up for hearing on 12.07.2018, this Court directed the Registry to post the matter along with C.R.P.(MD)No.2172 of 2017 on 16.07.2018. Hence, the matters are listed today before me.

3.Today, when the matters are taken up for hearing, the names of the respondents in C.R.P.(MD)No.2172 of 2017 are printed in the cause list, but they have not chosen to appear either in person or through counsel.

4.The learned counsel appearing for the revision petitioner submitted that the Court below has miserably erred in dismissing the pre-trial amendment application on an oversimplification of matter without advertting to the case of the revision petitioner from proper perspective. A typographical error crept in the cause title of the plaint and therefore, the revision petitioner filed the application to amend the plaint by removing the phrase "'Family Manager'". He further submitted that in order to avoid multiplicity of proceedings, the relief sought for by the revision petitioner has to be granted. Further, in order to determine the real questions in controversy between the parties, the proposed amendment is very much essential and therefore, the Court below ought to have taken a lenient view in deciding the matter. He also submitted that the conclusion of the Court below that the proposed amendment would introduce a new cause of action and change the entire nature of the case is unwarranted, more particularly, it is an admitted case by both the parties that they belong to Christian Community. It is common knowledge that there is no such capacity as "'Family



Manager'' in Christian Laws. Therefore, the learned counsel for the revision petitioner seeks for setting aside the impugned order passed by the Court below.

5.I have considered the arguments of the learned counsel for the revision petitioner and perused the materials available on record.

6.On perusal of the records, it is seen that the revision petitioner sought only pre-trial amendment of cause title. Pre-trial amendment could have been allowed liberally as the opposite party would not be prejudiced because they will have an opportunity of meeting the amendment sought to be made. The proposed amendment does not alter or substitute a new cause of action and do not cause any prejudice to the other side. The Court cannot reject amendment on the ground of some mistake, inadvertence of infraction of the procedure rules. The Court below ought to have liberally dealt with the application for amendment. Therefore, in the interest of justice and in order to avoid multiplicity of proceedings, this Court is inclined to set aside the fair and decretal order dated 12.09.2017, made in I.A.No.309 of 2017 in O.S.No.516 of 2010 and to permit the revision petitioner to amend the cause title as prayed for in the said application. Accordingly, C.R.P.(MD)No.2172 of 2017 is allowed and the fair and decretal order dated 12.09.2017, made in I.A.No.309 of 2017 in O.S.No.516 of 2010, on the file of the Principal District Munsif Court, Manapparai, is set aside and I.A.No.309 of 2017 stands allowed. No costs.

7.In view of the order passed in C.R.P.(MD)No.2172 of 2017, the learned counsel for the revision petitioner seeks permission of this Court to withdraw C.R.P.(MD)No.1439 of 2018 and he has also made an endorsement to that effect.

8.Recording the above said submission and the endorsement made by the learned counsel appearing for the revision petitioner, C.R.P.(MD)No.1439 of 2018 is dismissed as withdrawn. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/

Assistant Registrar (Crl Side)

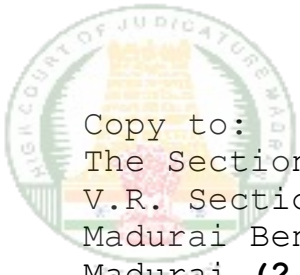
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Sub Assistant Registrar(CS-II)

To

1.The Principal District Munsif,
Manapparai.

2.The Additional District Munsif,
Manapparai.



Copy to:
The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. **(2 COPIES)**

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+2cc to Mr.G.Sridharan, Advocate, SR.No. 73085,73084

C.R.P(MD)Nos.1439 of 2018 & 2172 of 2017
16.07.2018

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