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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.12.2017

Judgment on : 16.02.2018

CORAM:

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

C.R.P (MD) No.1376 of 2011

and

M.P (MD) No.1 2011

1.M.Tippu Sulthan (Died)

2.Karim @ Abdul Karim

3.Balkish Beevi

4.Basheer Ahamed

... Petitioners/Respondents/Defendants

(* Petitioners 3 & 4 brought on record as LRS of deceased 1st petitioner vide Court order dated 18.07.2016 made in CMP (MD) Nos.6736 and 6737 of 2016)

Vs.

A.K.Mohammed Ibrahim

... Respondent/Petitioner/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of Civil Procedure code , to set aside the order dated 15.06.2011 and made in I.A.No.111 of 2011 in O.S.No.178 of 2010 on the file of the learned District Munsif, Uthamapalayam.

For Petitioners

: Mr.R.Surianarayanan

For Respondent

: Mr.V.Raghavachari

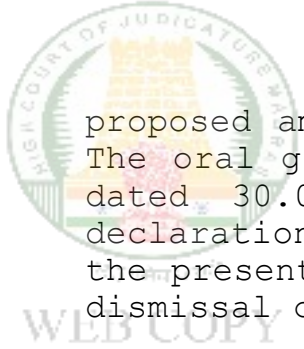
ORDER

This Civil Revision Petition has been filed to set aside the order dated 15.06.2011 and made in I.A.No.111 of 2011 in O.S.No.178 of 2010 on the file of the learned District Munsif, Uthamapalayam.

2. The facts of the case, in nutshell, are as follows:

2.1. The respondent herein has filed a Suit in O.S.No.178 of 2010 against the petitioners herein for permanent injunction. In the written statement, the second defendant has stated that one Mohamed Rowther in the year 1990 has gifted the property in his favour. On 30.08.2007 both the defendants have partitioned the suit property. The alleged oral gift and the subsequent partition are illegal and will not bind the petitioner. Hence, the petitioner wants to amend the plaint by incorporating the relief of declaration.

3. By way of counter affidavit, before the Court below, the petitioners herein/ respondents /defendants would state that if the



proposed amendment is allowed, it will change the cause of action. The oral gift deed was dated 04.11.1990 and the partition deed was dated 30.08.2007. The plaintiff has to seek the relief of declaration within three years from the date of document. Hence, the present amendment is barred by limitation and hence, prayed for dismissal of the amendment application.

4. After hearing both sides, the trial Court allowed the application in I.A.No.111 of 2011. Against which, the present Civil Revision Petition has been filed.

5. Heard the learned Counsel for the petitioners as well as the learned Counsel for the respondent and perused the materials available on record.

6. The only issue has to be decided in this petition is whether the amendment sought for by the petitioner, by including the relief of declaration is barred by limitation or not ? and whether the learned Trial Judge was right in allowing the above application ?

7. On perusal of records, it shows that the respondent/petitioner/plaintiff has filed the present petition seeking for amendment by including the relief of declaration, immediately after knowing about the oral gift deed and partition deed. The amendment has only to avoid multiplicity of proceedings. Further, pre-trial amendment will not create any prejudice over the other party. The other party will get an opportunity to contradict the pleadings and therefore, the issues regarding the oral gift and partition took place between the defendants 1 and 2 are not overseas to the subject matter of the suit and the proposed amendment is imperative for proper and effective adjudication of the suit. The amendment is also very much necessary for the purpose of determining the real question of controversy between the parties. The fact of limitation has to be decided with regard to the date of knowledge through the oral evidence of both parties. The pre-trial amendment is necessary for proper adjudication of the suit.

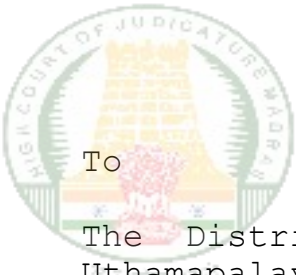
8. In my considered opinion the learned Trial Judge is right in allowing the application filed by the respondent/petitioner/plaintiff, which does not warrant any interference.

9. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

/True copy/



To

The District Munsif,
Uthamapalayam.

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+1cc to Mr.V.RAGHAVACHARI, Advocate, SR.49294

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and
M.P (MD) No.1 2011

16.02.2018

RM

KK/SV MMS/SAR 3/26.02.2018/ 3P- 3C/