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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.07.2018

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (MD) Nos.1049 and 1050 of 2013

and

M.P. (MD) No.1 of 2013

V.Varatharajan

... Petitioner in both CRPs.,

vs

1.Srinivasa Reddiyar

2.S.Duraisamy

.. Respondents in both CRPs.,

Prayer in C.R.P.(MD) No.1049 of 2013: Civil Revision Petition filed under Article 227 Constitution of India, to set aside the order dated 21.01.2013 in I.A.No.1060 of 2012 in O.S.No.467 of 2012 on the file of Principal District Munsif, Karur.

Prayer in C.R.P.(MD) No.1050 of 2013: Civil Revision Petition filed under Article 227 Constitution of India, to set aside the order dated 21.01.2013 in I.A.No.1061 of 2012 in I.A.No.814 of 2012 in O.S.No.467 of 2012 on the file of Principal District Munsif, Karur.

For Petitioner

in both CRPs.,

: Mr.K.Govindarajan

For Respondents

in both CRPs.,

: Mr.S.Gokul Raj

COMMON ORDER

These civil revision petitions have been filed by the plaintiff in the suit in O.S.No.467 of 2012, challenging the order passed by the learned Principal District Munsif, Karur, allowing the petition for amendment in I.A.No.1060 of 2012 in O.S.No.467 of 2012 and the order in I.A.No.1061 of 2012 in I.A.No.814 of 2012 in O.S.No.467 of 2012.

2.The brief facts that are necessary for disposal of these petitions are as follows:

The plaintiff filed a suit in O.S.No.467 of 2012 for declaration that the settlement deed dated 11.07.2012 is void as the plaintiff is not a party to the document and for permanent injunction.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The case of the plaintiff is that the suit properties including the property, which is also the subject matter of the



settlement deed dated 11.07.2012, are his absolute property having been allotted to him under the oral partition arrangement. The suit was contested by the defendant by filing a detailed written statement. Paragraph 2 of the written statement filed by the first defendant reads as follows:

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2.The allegation found in paragraph 3 of the plaint is true. The plaintiff and the Srinivasa Reddiyar are divided sons of one deceased Venkatarama Reddiyar. It is not correct. The second defendant is the undivided son of the first defendant. The suit properties are the absolute property of the plaintiff by virtue of oral partition took place in the year 1978 and the defendants 1 and 2 are true. But the plaintiff was in peaceful possession and enjoyment of the suit property and the defendants have no right in the suit property are nothing but false.

4.However, it is seen from the entire written statement that the defendant specifically disputes the plaintiff's right over the suit property and the manner of allotment of shares by the alleged oral partition that took place according to the plaintiff in the year 1978. The defendant filed an application in I.A.No.1060 of 2012 in the suit in O.S.No.467 of 2012 to amend the plaint so as to insert the word 'not' to mean that the plaint averments are not true. Similar insertion in para 13 of the written statement is also sought for. The amendment is to correct para 2 and 13 of written statement to be understood in tune with the rest of the written statement. Similar mistake was also found in the counter affidavit filed by the defendant in I.A.No.814 of 2012 in O.S.No.467 of 2012. Hence, similar application for amendment of the counter affidavit in I.A.No.814 of 2012 was sought for in I.A.No.1061 of 2012 in I.A.No.814 of 2012 in O.S.No.467 of 2012. Both the applications were allowed by the trial Court.

5.After specifically holding that the mistake pointed out by the defendant is due to inadvertence and amendment is in tune with the entire written statement, the petitions were allowed.

6.The trial Court has specifically observed that the defendant has never admitted the alleged oral partition pleaded by the plaintiff and that the error in the written statement as well as the counter affidavit are obvious.

7.This Court is also of the view that the sentence found in para No. 2 of the written statement filed by the plaintiff is not in tune with the case pleaded by the defendant in the whole written statement and therefore, the observation and the decision of the lower Court, while allowing the amendment is proper. It is ~~seen from the entire written statement~~ the whole written statement is an ill drafted one and the counsel, who prepared the statement is responsible for the mistake. From the reading of entire written statement, the



amendment is proper and required.

8. This Court find no reason to interfere with the reasons stated by the lower Court for allowing the applications. As a result, these civil revision petitions are dismissed. Though the suit is filed in the year 2012, it is stated that the trial of the suit is delayed in view of the pendency of these civil revision petitions as interim stay has been granted by this Court in these civil revision petitions. Hence, the Principal District Munsif, Karur is directed to expedite the trial and dispose the suit in O.S.No.467 of 2012 within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/

Assistant Registrar(Crl Side)

/True copy/

Sub Assistant Registrar

To
The Principal District Munsif,
Karur.

+1cc to Mr.S.GOKUL RAJ, Advocate, SR.No. 71467
+1cc to Mr.K.GOVINDARAJAN, Advocate, SR.No. 71402

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