

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(NPD).No.1610 of 2015

and M.P.No.1 of 2015

1.Purushothaman
2.Raja @ Rajasekaran
3.Dayanidhi

.. Petitioners

vs.

1.Kumari
2.Gnanasoundari
3.Pushpa
4.Arasau
5.Banumathi
6.Manjula

.. Respondents

Prayer.: Civil Revision petitions filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 05.03.2015 made in I.A.No.1048 of 2014 in O.S.No.326 of 2009 on the file of the Additional District Munsif Court, Villupuram.

For Petitioners : Mr.D.Rajasekar

For R1 : Mr.T.dhanyakumar

For R2 to R6 : No appearance

ORDER

The first petitioner is the plaintiff in O.S.No.326 of 2009 on the file of Principal District Munsif Court, Villupuram .

2. The suit was filed on the strength of a registered will dated 06.03.2000, wherein the petitioners' father Narayanasamy Pillai was given a right to the enjoy the property till his children attained the age of majority. The suit was filed for for declaration and recovery of possession.

3. After the trial was completed, the case was listed for arguments on 01.12.2014. The petitioner through filed I.A.No.1048 of 2014 to implead the beneficiaries of the will viz., his son.

3. The said I.A. came to be filed in response to the defence taken by the respondent that the "Will" was not only concocted and even as per the alleged Will, the first petitioner had no right over the property. The lower court has concluded that the petitioner has not adequately explained the reasons for allowing the application to implead his sons.

4. The Court has further observed that if the application for amendment is allowed and the plaint was allowed to be amended as per the proviso to Order 6 Rule 17 of C.P.C. , no application for amendment shall be allowed after

the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial.

5. In the affidavit filed by the petitioner, the petitioner has not given the age of his children except but for a blunt statement in paragraph no.4 that his sons 2 and 3 (proposed plaintiffs) were minors and therefore had failed to implead them before the commencement of trial.

6. Per contra, the learned counsel for the respondents /defendants submitted that the suit is of the year 2009 and the written statement was filed in the year 2010. After the trial was completed when the case was listed for arguments, the application has been filed with a view to delay the arguments and eventual passing of Judgment and decree by the Court. Further four years have lapsed. Therefore, the present civil revision petition may be dismissed.

7. I have considered the arguments of the learned counsel for both sides and also perused the materials available on records.

8. As per Order 1 Rule 10 (1) of C.P.C., the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so

to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

9. In the present case, the application was filed in the year 2014 and the same was disposed in 2015. There is no delay in filing the suit. There is only a delay in impleading the sons as plaintiffs. There is no harm in impleading them as co-plaintiff as admittedly they are the ultimate beneficiaries under the Will.

10. The petitioner has obtained an interim stay in the proceedings vide order dated 23.03.2015. Though the interim stay to be in force for the period of six weeks from 23.04.2015 and was not extended, yet due to pendency of the present Civil Revision Petition, the suit has not been taken up for final disposal.

11. I am of the view that the Civil Revision Petition can be allowed with a limited relief to implead the two sons of the petitioner as 2nd and 3rd plaintiffs alone. However, no further amendment to the plaint shall be entertained by the Court.

12. The learned Additional District Munsif Court, Villupuram is therefore directed to permit the petitioner and amend the cause title of the plaint

alone. The Court shall after that proceed to pass a final Judgment and Decree within a period of six months from the date of receipt of a copy of this order based on the evidence on record after hearing the parties.

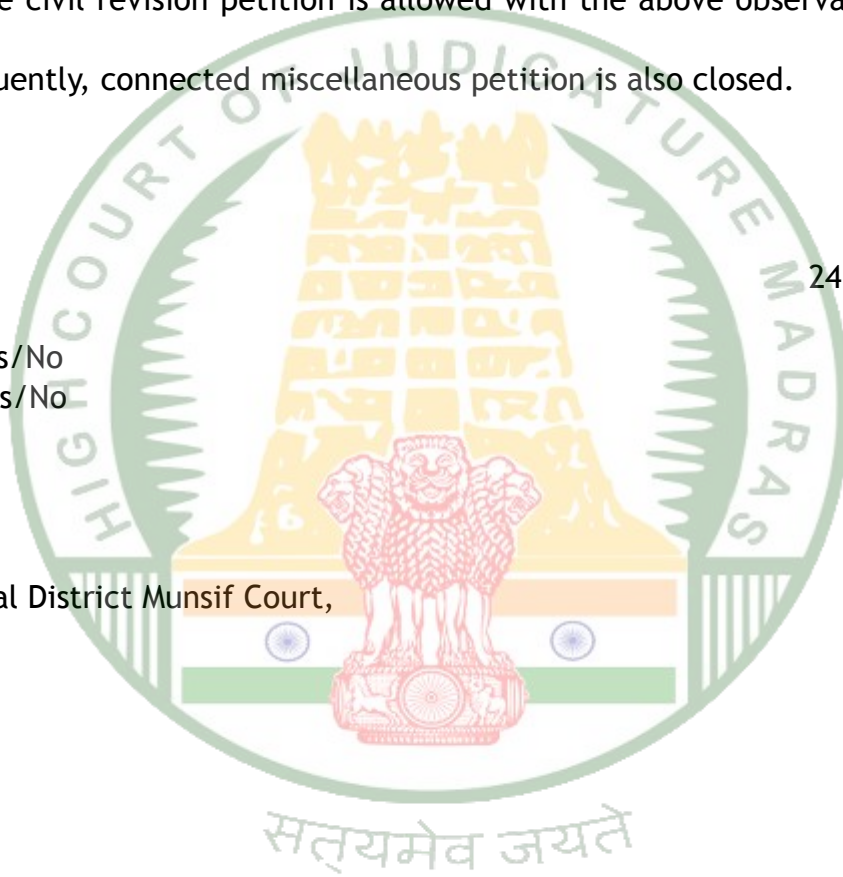
13. The civil revision petition is allowed with the above observation. No cost. Consequently, connected miscellaneous petition is also closed.

24.06.2019

Index : Yes/No
Internet : Yes/No
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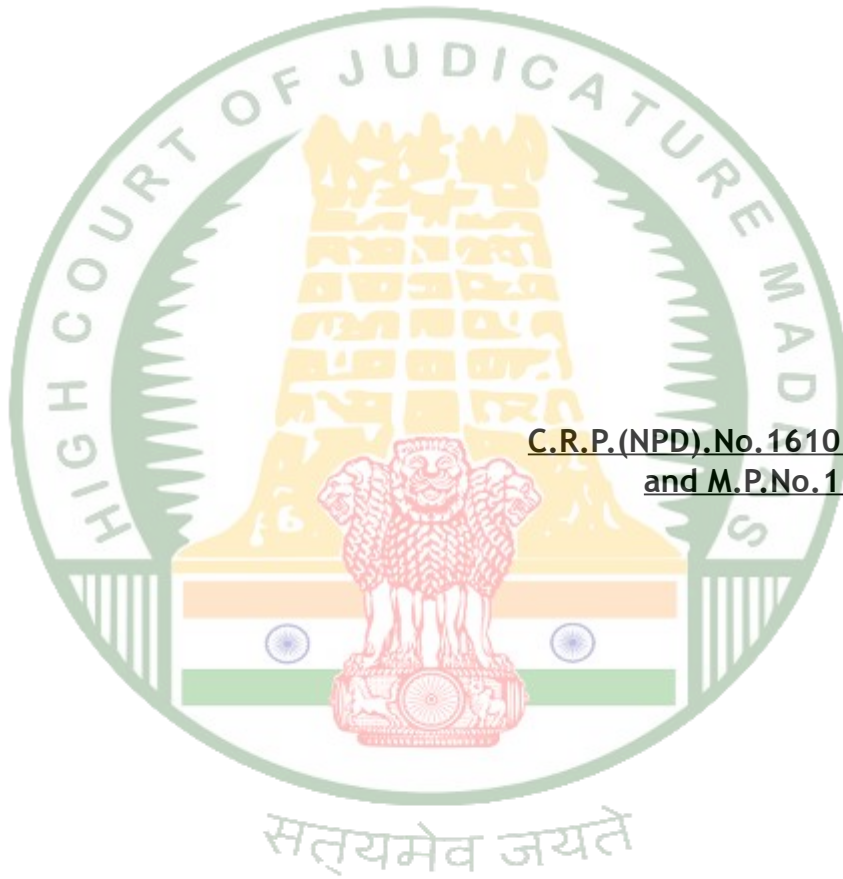
The Additional District Munsif Court,
Villupuram.



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C.SARAVANAN,J.

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