

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P. (NPD) No.2643 of 2013
and M.P.No.1 of 2013

1. Ramkumar
2. R.Prema
3. Srinivasan

.. Petitioners

Vs.

1. Venkataramana
2. Vinitha

.. Respondents

PRAYER: Civil Revision Petition filed under section 115 of Code of Civil Procedure against the order and decretal Order dated 21.12.2012 in I.A.No.403 of 2010 in A.S.No.30 of 2010, on the file of the IInd Additional Subordinate Judge at Villupuram.

For Petitioners : Mr.V.Raghavachari

For Respondents : Mr.T.Gandhi

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ORDER

This civil revision petition is filed against the order of the First Appellate Court dismissing the application filed for amendment.

2. The amendment was sought only to include that plaintiffs' mother has executed a settlement deed dated 11.04.2006 in pursuance to the oral gift deed said to have been given by her. The Appellate Court has dismissed the application, against which, the present civil revision petition is filed.

3. The suit in fact has been filed by the plaintiffs for declaration and for permanent injunction and the same was decreed on 21.12.2009, against which, the respondents filed the appeal before the First Appellate Court. At this stage, the plaintiffs has filed an application to include the settlement deed executed by their mother dated 11.04.2006.

4. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents and also perused the materials available on record.

5. It is curious to note that the settlement deed in question has already been marked as Ex.A4 in the trial Court, but, having pleaded the earlier oral settlement by their grand father, it appears that there is no pleadings made with regard to the Registered settlement deed made by their mother, but, the amendment sought was only for incorporation of the settlement deed executed by their mother, except that, there is no other amendment sought for. The amendment whatever sought is only a formal amendment.

6. Therefore, I am of the view that when the amendment is only formal, it does not change the cause of action or nature of the suit. The application for such amendment has to be liberally construed. No doubt, the proviso to Order 6 Rule 17 contemplates that post trial, the amendments cannot be allowed as a matter of right, only on exceptional circumstances when the fact remains that the amendment is only formal one, the documents are already on record. The parties were put on notice and also canvassed the case on the basis of documents also. Mere making an amendment in the pleading by including the execution of document and merely because the application is filed during the appeal stage, I am of the view that the

same cannot be dismissed only on the ground that the post trial amendment is not permissible. Hence, the amendment sought to be made is already an issue before the trial Court, when the parties were put on notice, the document were also on record. Mere incorporation in the pleading by just mentioning about the execution of the document, will not change the character of the suit and no prejudice will be caused to the other side.

7. Accordingly, the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

8. The order of the First Appellate Court is set aside and the amendment petition is allowed. The revision petitioner is directed to carry out the amendment within a period of two(2) weeks from the date of receipt of a copy of this order. Thereafter, the First Appellate Court shall dispose of the appeal within a period of three (3) months.

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msv

Index:Yes/No

Internet:Yes/No

Speaking order: Non-speaking order

Note:Issue order copy on or before 04.04.2019.

To

The learned II Additional Subordinate Judge,
Villupuram.



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N.SATHISH KUMAR,J.

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