

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (PD) No.3921 of 2014
and
M.P. No.1 of 2014

Menaka

... Petitioner

Vs

1.P.Revathi
2.Periammal

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India challenging the fair and decreetal order dated 14.08.2014 in I.A.No.280 of 2014 in O.S.No.428 of 2007 on the file of the II Additional District Munsif, Erode.

For Petitioner

: Ms.R.Sripriya

for V.Raghavachari

For Respondent 1

: Mr.V.V.Sathya

For Respondent 2

: Mr.S.Kaithamalai Kumaran

ORDER

The instant civil revision petition has been filed challenging the order dated 14.08.2014 in I.A.No.280 of 2014 in O.S.No.428 of 2007 passed by the learned IInd Additional District Munsif, Erode.

Brief facts leading to the filing of the instant revision:

2. The petitioner is the plaintiff in the suit O.S.No.428 of 2007 pending on the file of the learned IInd Additional District Munsif, Erode. The first respondent is the sister of the petitioner's father S.Palanisamy and the second respondent is the grandmother of the petitioner. Originally, the petitioner filed a suit for bare injunction restraining the respondents from interfering with her peaceful possession and enjoyment of the suit schedule property as she claimed that she is the absolute owner of the suit schedule property by virtue of a settlement deed dated 23.04.2007 executed in her favour by her father S.Palanisamy. The first and second respondents respectively filed their written statements before the Trial Court.

3. In the written statement, the first respondent has stated that the will dated 24.02.2006 executed by the petitioner's grand father Senniappa Gounder in favour of petitioner's father S.Palanisamy is a forged one and consequently, the settlement deed dated 23.04.2007 executed by her father in her favour is also a fabricated document. However, the second respondent who is the grandmother of the petitioner in her written statement has admitted that the will dated 24.02.2006 executed by Senniappa Gounder in favour of the petitioner's father S.Palanisamy is a genuine will. Thereafter, the petitioner filed a reply statement before the Trial Court to the written statement filed by the first respondent/first defendant reiterating the contents of the plaint. I.A.No.280 of 2014 was filed by the petitioner seeking for amendment of plaint to include the relief of declaration and injunction that she is the absolute owner of the suit schedule property, since the first respondent/first defendant has disputed her title over the same.

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4. In the affidavit filed in support of I.A.No.280 of 2014 in O.S.No.428 of 2007, the petitioner has averred that she is in possession of the suit schedule property and she has been delivered possession of

the same, pursuant to a registered gift settlement deed dated 23.04.2007 executed by her father S.Palaniappan to whom it was bequeathed by his father late Senniappa Gounder through a will dated 24.02.2006. Since the first respondent has challenged the will dated 24.02.2006 and thereby questioning the locus standi of the petitioner's father to execute the Gift Settlement Deed dated 23.04.2007, this necessitated the petitioner to file the amendment application seeking for comprehensive relief of declaration and injunction in the suit.

5. A counter affidavit has also been filed by the first respondent/first defendant stating that the will dated 24.02.2006 executed by Senniappa Gounder in favour of the petitioner's father S.Palanisamy is a bogus will and consequently, the settlement deed dated 23.04.2007 allegedly executed by the petitioners father in favour the petitioner is a fabricated document. It is also averred that the first respondent has filed a suit in O.S.No.548 of 2007 against the petitioner for a bare injunction which is similar to the instant suit O.S.No.428 of 2007.

6. As seen from the typed set of papers filed by the respective counsels before this Court, this Court does not find any counter affidavit filed in I.A.No.280 of 2014, though the learned counsel for the first respondent vehemently opposes the allowing of the amendment application.

7. By order dated 14.08.2014, the Trial Court dismissed the amendment application namely I.A.No.280 of 2014 in O.S.No.428 of 2007 filed by the petitioner on the ground that the first respondent/first defendant has taken a plea in her written statement that the will dated 24.02.2006 executed in favour of S.Palanisamy by his father, Senniappa Gounder is a bogus one and therefore, the petitioner cannot seek amendment of the plaint seeking for comprehensive relief of declaration and injunction that she is the absolute owner of the suit schedule property. Aggrieved by the dismissal of I.A.No.280 of 2014 in O.S.No.428 of 2007, the instant revision has been filed under Article 227 of the Constitution of India.

Submissions of the learned counsels:

8. Heard Ms.R.Sripriya, learned counsel for the petitioner, Mr.V.V.Sathya, learned counsel for the first respondent and Mr.S.Kaithamalai Kumaran, learned counsel for the second respondent.

9. The learned counsel for the petitioner submitted that it became necessary for the petitioner to file the amendment application in view of the fact that the first respondent/first defendant as alleged in her written statement that the will dated 24.02.2006 executed by Senniappa Gounder in favour of the petitioner's father S.Palanisamy as a bogus document. She submitted that the written statement was filed by the first respondent/first defendant in the suit O.S.No.428 of 2007 on 21.04.2010 and reply statement was also filed by the petitioner denying the allegations made by the first respondent in her written statement. She further submitted that the amendment application was filed even before trial in the suit and therefore, the trial Court ought to have allowed the amendment application and ought not have adopted hyper technical approach by rejecting the application.

10. The learned counsel for the petitioner would further contend that the reason given by the Trial Court for rejecting the application is only based on the pleading made by the first respondent/first defendant in her written statement that the alleged will executed in favour of the petitioner's father is a bogus one which has not been substantiated by any oral or documentary evidence. According to her, for the effective determination of the dispute between the parties, the amendment application has become necessary and therefore, it ought to have been allowed by the Trial Court.

11. Per contra, learned counsel for the first respondent would submit that the amendment application is hopelessly barred by law of limitation. According to him, the written statement was filed on 21.04.2010 but the amendment application was filed only on 10.07.2014, which is beyond the period of three years from the date of filing of the written statement and hence, it is barred by law of limitation.

12. The learned counsel for the second respondent has not seriously opposed the allowing of the instant revision.

Discussion:

13. Admittedly, the petitioner and the respondents are family members. The first respondent is the sister of the petitioner's father S.Palanisamy and the second respondent is the grandmother of the petitioner and the wife of the Senniappa Gounder. The petitioner claims absolute ownership of the suit schedule property, based on the will dated 24.02.2006 executed in favour of her father S.Palanisamy by his father Senniappa Gounder and thereafter, she has got a settlement deed executed in her favour dated 23.04.2007 by her father S.Palanisamy. But in the written statement filed by the first respondent/first defendant, the first respondent/first defendant has disputed the alleged will dated 24.02.2006 and has stated that the said will is a bogus one and has also pleaded the consequential settlement deed dated 23.04.2007 executed in favour of the petitioner is a fabricated document.

14. The written statement was filed by the first respondent/first defendant on 21.04.2010 in the suit O.S.No.428 of 2007. The amendment application namely I.A.no.280 of 2014 was filed by the

petitioner/plaintiff in view of the contention of the first respondent/first defendant that the will dated 24.02.2006 is a bogus document and in the amendment application, the petitioner/plaintiff has sought to amend the plaint to seek for a comprehensive relief namely relief of declaration and injunction that the petitioner/plaintiff is the absolute owner of the suit schedule property.

15. As seen from the typed set of papers filed by the respective counsels before this Court, no counter has been filed by the first respondent/first defendant opposing I.A.No.280 of 2014 filed by the petitioner/plaintiff to amend the plaint. However, the learned counsel for the first respondent/first defendant vehemently argued that the amendment application filed by the petitioner/plaintiff is hopelessly barred by law of limitation as it has been filed beyond the period of three years from the date of filing of the written statement by the first respondent/ first defendant.

16. This Court has also perused the impugned order. The only reason given by the Trial Court for rejection of the amendment

application is based upon the pleading in the written statement filed by the first respondent/first defendant in the suit, wherein she has stated that the will dated 24.02.2006 is a bogus document and consequently, the settlement deed executed in favour of the petitioner/plaintiff is a fabricated document. There is no discussion in the impugned order as to whether the amendment application is necessary or not for the effective adjudication of the dispute between the parties, that too, when parties to the dispute belong to the same family.

17. Admittedly, the amendment application has been filed even before commencement of trial. Even though the Trial Court had observed that the amendment application was filed after trial in the impugned order, it can now be inferred that the amendment application was filed before trial as additional written statement which was filed by the first respondent/first defendant only on 19.06.2014 whereas the amendment application was filed on 10.07.2014 by the petitioner. It was also submitted by the learned counsel for the petitioner that the issues were re-casted after the additional written statement was filed by the first respondent/ first defendant in the suit and therefore, the amendment

application was filed only before trial, whereas the Trial Court has erroneously observed in the impugned order that the amendment application was filed during the course of trial.

18. It is settled law that in cases where amendment application has been filed under Order VI Rule 17 of CPC before trial, the Court will have to be liberal and should not adopt hyper technical approach. Considering the fact that the dispute is between the family members and considering the fact that it is the consistent stand of the petitioner/plaintiff that they came to know about the dispute raised by the respondents/defendants that the alleged will dated 24.02.2006 and consequential settlement deed dated 24.03.2007 are forged documents, only after the filing of the written statement by the first respondent/first defendant, this Court is of the considered view that for the effective adjudication of the dispute between the parties, the Trial Court ought to have allowed the amendment application. However, the Trial Court has erroneously dismissed the same, that too, on the ground of the plea taken by the first respondent/first defendant in her written statement that the alleged will and the settlement deed are forged

documents which has not been established by the first respondent/first defendant and the same can be adjudicated only after trial.

19. For the foregoing reasons, this Court is of the considered view that the amendment application ought to have been allowed by the Trial Court.

Conclusion:

20. In the result, the impugned order dated 14.08.2014 passed in I.A.No.280 of 2014 in O.S.No.428 of 2007 is hereby set aside and the amendment sought for by the petitioner/plaintiff in I.A.No.280 of 2014 in O.S.No.428 of 2007 filed before the Trial Court is allowed as prayed for and the petitioner/plaintiff is directed to carry out the amendment within a period of three weeks from the date of receipt of a copy of this order, by paying necessary court fee. After carrying out the amendment, the respondents/defendants are permitted to file additional written statements if required, and the trial court is directed to dispose of the suit within a period of six months from the date of carrying out of the amendment by the petitioner.

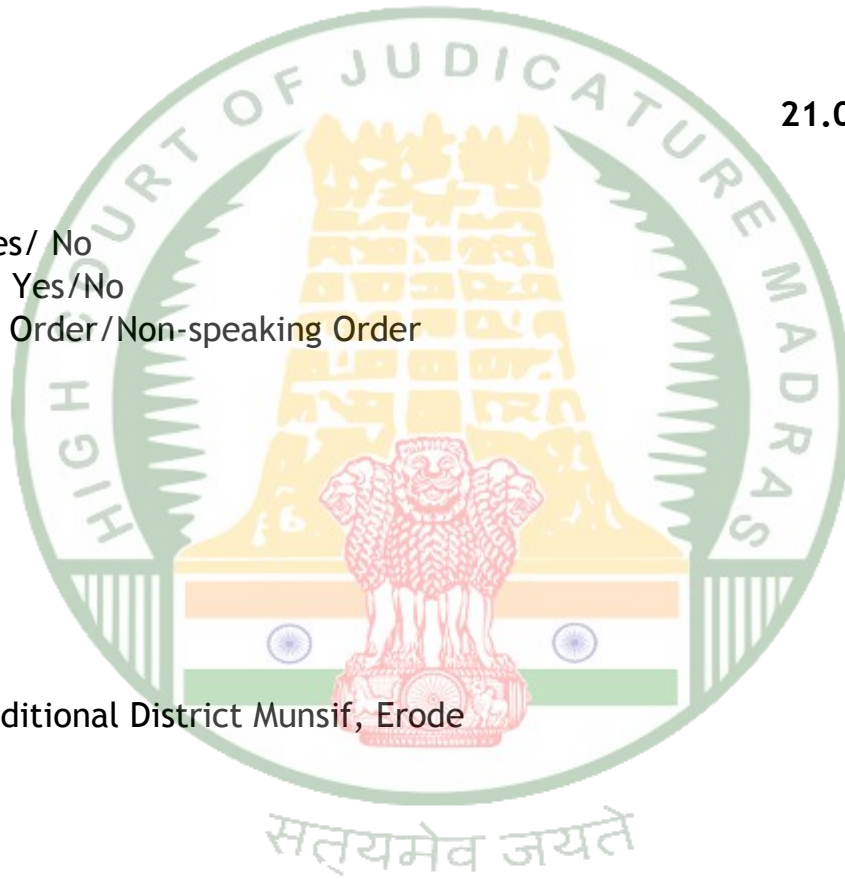
21. With the aforesaid directions, the Civil Revision Petition is disposed of. No costs. Consequently connected miscellaneous petition is closed.

21.06.2019

Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order

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To
The II Additional District Munsif, Erode



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ABDUL QUDDHOSE, J.

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