

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 30.09.2019

Orders Pronounced on : 18.10.2019

CORAM

THE HON'BLE MR. JUSTICE **R.PONGIAPPAN**

CRP.PD.No.4312 of 2014

and

M.P.No.1 of 2014

Sundarasamy

..Petitioner

Vs.

1.Thangathal @ Easwari

2.Kamalammal

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 07.08.2014 passed in I.A.No.2227 of 2013 in O.S.No.439 of 2011 by the learned District Munsiff, Udumalapet.

For Petitioner

: Mr.L.Mouli

for Mr.M.N.Balakrishnan

For Respondents : Mr.B.Gopalakrishnan

for Mr.S.Gunalan

ORDER:

The third defendant in O.S.No.439 of 2011 on the file of the District Munsif Court, Udumalpet is the petitioner herein. The respondents in this Civil Revision Petition as plaintiff filed a suit as against four defendants, seeks relief of partition and separate possession. The said suit has been filed in the year 2011. During the pendency of the said suit, the petitioner herein filed a petition in IA.No.2227 of 2013 under Order 6 Rule 17 of CPC for amending the written statement in which he wanted to implead as "on 26.02.1998 his father executed a Will in which he bequeathed the entire suit property in favour of the petitioner". After the execution of above referred unregistered Will, his father was died on 13.08.1998. The learned District Munsif, Udumalpet after hearing the respondents herein in its order dated 07.08.2014 had dismissed the petition filed by the petitioner by saying that the petitioner is attempted to introduce mutually destructive plea, which is against the judgment of ***Ilayaperumal Vs. M/s. Madras Cements, Alathur, Ariyalur District rep. By its General Manager*** reported in **2013 (5) LW 488**. Aggrieved over the said finding, the petitioner is before this Court.

2.Today when the petition is came up for hearing, the learned counsel appearing on behalf of the petitioner and the learned counsel appearing on behalf of the respondents are present and made their respective submissions.

3.The learned counsel appearing for the petitioner would contend that only during the time when he met one Arusamy Gounder in the year of 2013, the petitioner gained the knowledge about the execution of unregistered Will by his father. So it is relevant as well as the duty of the petitioner to produce the same before the trial court for proper adjudication. Only in the said circumstances, the petitioner filed this application and the same was dismissed by the lower court without considering the circumstances on which the Will was identified by the petitioner.

4.On the other hand, the learned counsel appearing for the respondents would contend that the petitioner now attempted to introduce a new case by way of filing the amendment application. Further he added that the earlier submission made by the defendant through the written statement is now withdrawn by the petitioner and therefore the order passed by the learned District Munsif, Udumalpet is well within the legal frame work.

5.Submissions made by the counsels appearing on either side are considered.

6.In fact, the suit pertains to this Civil Revision Petition has been filed by the respondents for the relief of partition. According to the plaint, it is not in dispute that the deceased Ramasamy Gounder is the absolute owner of the suit schedule property. At the time of his death, he left his wife Mayilathal, two sons and three daughters as his legal heirs. In the above referred legal heirs, the two daughters, Kamalathal and Visalakshi as a class I heir filed suit for the relief already referred above.

7.On receipt of summon from the said suit, the petitioner herein filed written statement stating that his father was died after leaving the above referred legal heirs. Further he has stated that the plaintiffs / respondents herein are attempted to alienate the suit property, which is the absolute property of his father. In otherwise, in the written statement filed already, he took the plea as his father while at the time he was alive did not execute any alleged will.

8.Now on go through the affidavit filed by the petitioner in support of the petition filed before the trial court, he has stated one

Arusamy Gounder son of Kumarasamy Gounder met the petitioner and told to him that his father executed unregistered will on 26.02.1998 and handed over the same to him. According to the petitioner the alleged will dated 26.02.1998 was received in the year 2013 from Arusamy Gounder. Immediately he filed the application under Order 6 Rule 17 of CPC for the relief to amend the written statement filed already.

9. Now on go through the Order 6 Rule 17 of CPC, which reads as follows:

"17. Amend of pleadings: The court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties."

10. So according to the said provision, the court below has got every right to allow the amendment application filed at any stage and all such amendments shall be made for the purpose of determining the real question in controversy. Now it is to be decided that in spite of due diligence, the party could not have raised the matter before the commencement of trial. In this regard, as per the case of the

petitioner / defendant, his father was died on 13.08.1998. It is also the case of the petitioner that his father executed Will on 26.02.1998. Subsequent to that after a lapse of three years, only in the year 2011, the respondent filed the suit and thereafter the petitioner filed written statement only on 23.12.2011. In this occasion it is to be borne in mind that it is common that if any person executed Will, definitely he will handed over the same to the person who is acquainted with his family. Further it is common that if a person who is having close acquaintance with the deceased person definitely he would attend the final rites of deceased person. In the said circumstances, if the case put forth by the petitioner is true one, definitely the particulars of the unregistered Will executed by his father is came to light on the date on which his father was died. Being the friend of the deceased Ramasamy the said Aruchamy definitely attended the final ceremony of the deceased father(Ramasamy Gounder). Though the petitioner being the defendant entitled to file application under Order 6 Rule 17 of CPC to amend written statement, that should be allowed only at the circumstances when the amendment should not introduce a new case and alter the cause of action. But in this case, if the amendment sought by the petitioner is allowed it will be a new case through which the petitioner claims the entire property. Further the amendment now required is nothing but inconsistent one. The admission made in

favour of the plaintiffs is now withdrawn by the petitioner / defendant. In this regard, it is relevant to see the judgment of **B.K.Narayana Pillai Vs. Parameswaran Pillai and Another** reported in **(2000) 1 SCC 712**, the Hon'ble Apex Court has held as follows:

"All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. Proposed amendment should not cause such prejudice to the other wide which cannot be compensated by costs."

11. So applying the said principle with the present case in hand, in this case also the petitioner / defendant took mutually destructive allegation of facts and so the application filed by him cannot be entertained. The court below only by holding as above by saying that the application filed by the petitioner under the principle of mutually destructive plea, dismissed the application and therefore, the intervention of this Court in findings rendered by the trial court is not necessary.

R.PONGIAPPAN,J.

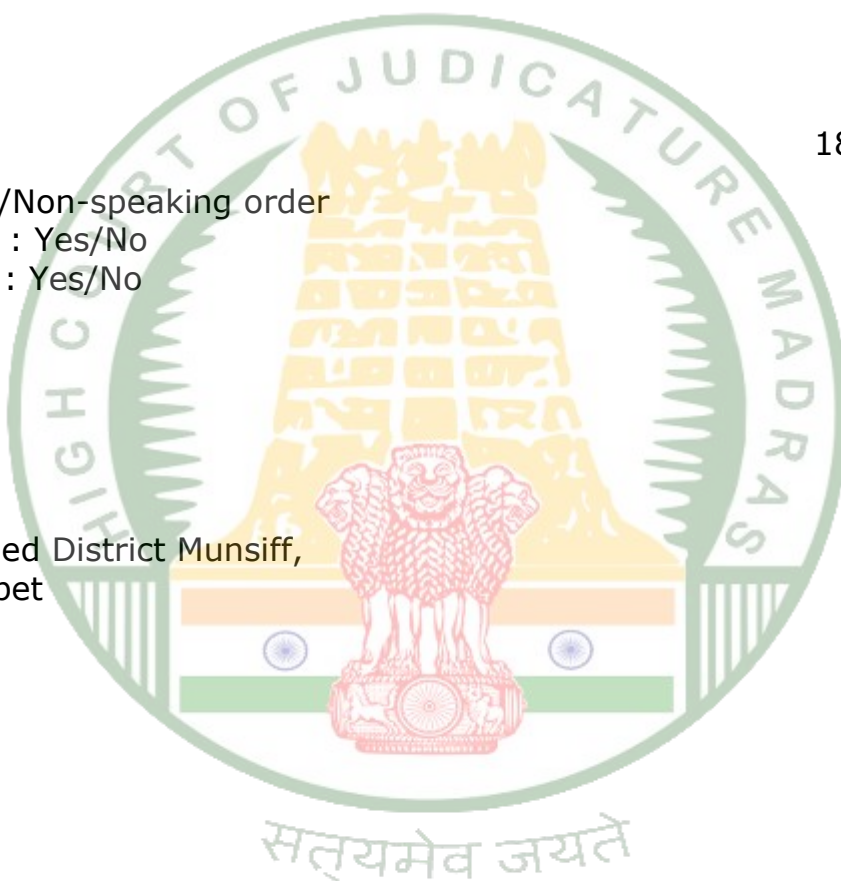
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12.Accordingly, the Civil Revision Petition is dismissed.
Consequently, connected miscellaneous petition is closed. No costs.

18.10.2019

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
lok

To
The learned District Munsiff,
Udumalapet



Pre Delivery order made in
CRP.PD.No.4312 of 2014 and
M.P.No.1 of 2014

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