

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (PD) No. 3671 of 2019

and

C.M.P. No. 24126 of 2019

1. K. Prabhudoss

2. K. Sugumari

3. Talitha

4. P. Vijayakumar

5. P. Premkumar

... Petitioners

1. K. Ebrahim

2. K. Agrihim

3. Krupavaram

4. Elizabeth Rani

... Respondents

Prayer : Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 06.08.2019 in I.A. No. 4 of 2019 in O.S. No. 49 of 2014 on the file of the IV Additional District Judge, Thiruvallur @ Ponneri.

For Petitioners : Mr. D. Nellaippan

ORDER

This Civil Revision Petition has been filed against the fair and decretal order made in I.A. No. 4 of 2019 in O.S. No. 49 of 2014 on the file of the IV Additional District Judge, Thiruvallur @ Ponneri, by order dated 06.08.2019.

2. Before the trial Court, the respondents / plaintiffs filed a suit for partition against the revision petitioners / defendants. In the said suit, apart from the prayer for partition, they sought for declaration of the settlement deed dated 02.06.2006 made in favour of the defendants 5 to 7 as null and void. With these prayers, the suit was taken up for trial.

3. In the written statement, it has been averred by the defendants that, a Will has been executed by the father of the plaintiffs, who is also the father of the first and second defendants, on 02.06.2006. It was registered as a document at the concerned Registrar's Office and

the copy of the said Will was marked as Ex.B3 during the trial by the defendants side, then only, according to the plaintiffs, they claim the knowledge about the Will. It seems that it is the case of the plaintiff that, the Will is a fabricated and forged one and on that ground, they challenged the said Will dated 02.06.2006 as null and void. Therefore it become necessitated for them to sought for amendment in the pleadings in O.S.No.49 of 2014 and accordingly, I.A. No. 4 of 2019 was filed. The trial Court after hearing both sides, allowed the said IA through the impugned order, aggrieved over the same the present revision petition has been filed.

4. Heard Mr. D. Nellaippan, learned counsel appearing for the revision petitioners who would submit that, the execution of the said Will, being a registered one, has attracted the knowledge of the plaintiffs earlier also and assuming they had no knowledge about the Will, at least at the time of filing the written statement in the year 2014, it had been divulged that, there was a Will in favour of the first defendant dated 02.06.2006. When that being the position, immediately after knowing the filing of the written statement, the plea could have

been raised by the plaintiffs.

5. However, the plaintiffs have awaited for trial and when the trial is in the concluding stage, they come out with the present application to amend the prayer.

6. The learned counsel would further submit, even though Order VI Rule 17 of the Civil Procedure Code enables the amendment at any stage of the suit, normally such kind of amendment shall be permitted before the commencement of the trial.

7. Once the trial is commenced, if there is extraordinary circumstances where the Court has got sufficient and satisfactory reason from the party who seek amendment, then only on such ground, amendment can be allowed.

8. Here in the case in hand, the plaintiffs have knowledge about the Will at least through the averments made in the written statement dated 24.09.2014 and when that being so, after five years the

present application was filed and had been allowed which is not within the meaning of Order VI Rule 17 of the Civil Procedure Code, therefore, the said order impugned is liable to be interfered with, he contended.

9. I have considered the said submission made by the learned counsel appearing for the revision petitioner and also perused the materials placed before this Court.

10. Though it has been divulged in the written statement that, there has been a Will registered in favour of the first defendant, immediately copy of the Will not seems to have been filed before the Court. The same has been filed and marked through the defendants side witnesses as Ex.B3 during the trial, then only, according to the plaintiffs / respondents, they came to know that, there has been a Will, which, according to the plaintiffs, is a forged one, therefore, it directed them to challenge the said Will also, hence, necessary amendment has been required, accordingly the present application was filed.

11. Insofar as the power of the Court to allow the amendment

is concerned, the law is well settled under Order VI Rule 17 of the Civil Procedure Code, that the application can be allowed at any stage of the suit, even at the time of trial and even after the trial at the time of arguments.

12. Only satisfactory aspects is that, it is for the Court to decide, whether the amendment can be allowed at the advanced stage. Here in the case in hand, it is in the stage of arguments, the present application has been filed. Though can be construed it with bit delay, the fact remains that, there has been a Will, on the property sought to be partitioned, have been bequeathed in favour of the first defendant alone and according to the plaintiffs, the said Will is forged or fabricated one. Whether it is so or not to be decided by the trial Court, for which, the Will in question has to be tested. The necessary prayer to declare the said Will also as null and void along with the settlement deed as has been prayed for already become necessitated and therefore that purpose of amendment become inevitable.

13. Considering all these reasons, the trial Court allowed the

said application. Even though it was filed after completion of trial or at the stage of commencement of the arguments, only on the satisfactory reason, as per the line explained above, therefore, this Court feels that, the said order need not be interfered with. Accordingly, this Court is not entertaining this revision and hence it is dismissed.

14. However, since the suit is of the year 2014, that too for partition among brothers and sisters, where already the trial is over and if at all based on the amendment if any further witnesses has to be examined that also can be completed at the earliest and at any rate, the suit can be decided for passing preliminary decree within a period of six months from the date of receipt of a copy of this order.

15. With these directions, the Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is also closed. No costs.

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Index : Yes / No

Speaking order / Non speaking order

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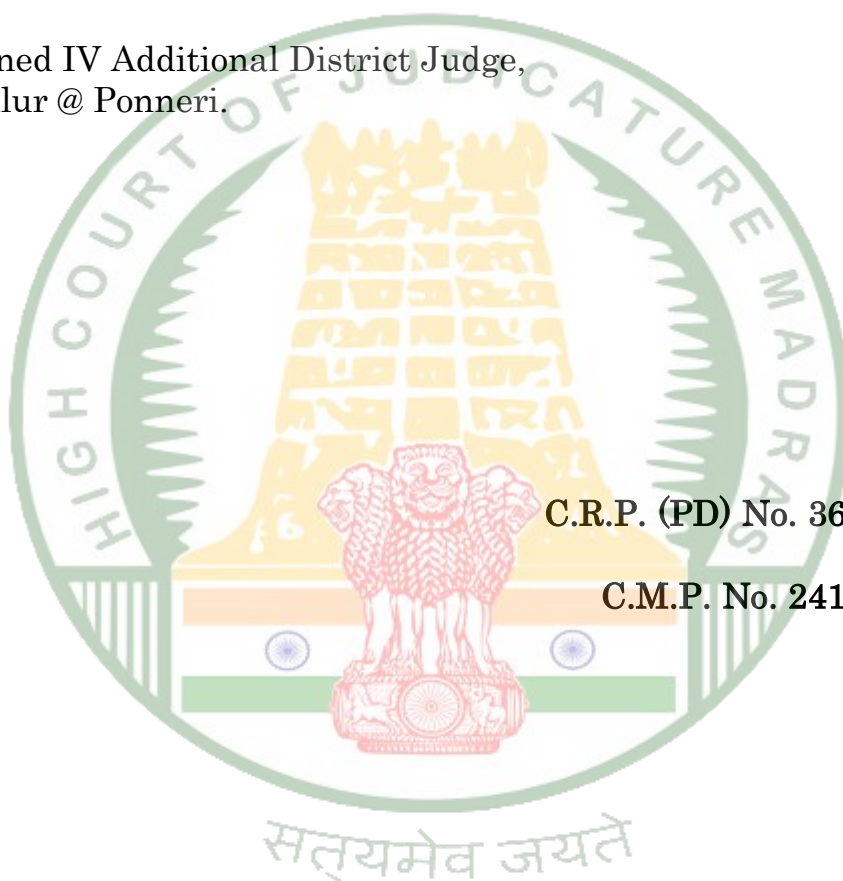
Note: Issue order copy by 19.11.2019.

R. SURESH KUMAR, J.

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To

The learned IV Additional District Judge,
Thiruvallur @ Ponneri.



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