

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(PD).No.3203 of 2018

&

C.M.P.No.18304 of 2018

1.Mrs.Thulasiammal

2.Mrs.Rathinammal

3.Mrs.Karunaiammal

4.Saraswathi

...Petitioners

Vs

1.Kaliappa Gounder

2.Gopalasam

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decretal order dated 19.09.2018 in I.A.No.1344 of 2018 in O.S.No.154 of 2013 on the file of the Honourable Court of the Principal Subordinate Judge, Coimbatore.

For Petitioners : Mr.K.R.Arun Shabari

ORDER

The above Civil Revision Petition is filed challenging the order passed in I.A.No.1344 of 2018 in O.S.No.154 of 2013 by the Principal Subordinate Judge, Coimbatore dismissing the application for an amendment filed by the revision petitioner/plaintiff. The facts in brief are as follows:

2.The plaintiff/revision petitioner had filed a suit for partition of their 5/10th share in Item No.2 to 4 of the properties and 1/5th share in suit Item Nos. 3, 5 to 8. The suit was filed in the year 2012 and the written statement was filed on 11.06.2013 wherein in paragraph No.3 of the written statement the defendants 1 and 2 would state as follows:

"When Valliammal was hale and healthy on her own free will volition and in sound disposing state of mind she had executed a registered will dated 14.02.1973 in favour of Kandasamygounder in respect of an extent of 8 acres in S.F.No.130 and an extent of 1.91 acres in S.F.No.51 of Arasur Village. She died in the year 1979. After her death the will came into force. As per the will Kandasamygounder

become the absolute owner of the property. In fact Kandasamygounder sold an extent of 1.91 acres inherited by him under the will."

3. There was no reply filed to the above written statement and thereafter when the matter was posted for arguments the plaintiff had come forward with the above application on the ground that the omission to include the said property was only an oversight as the documents were retained by their earlier counsel.

4. They also went on to say that they were under the impression that the property had been included in the plaint itself. It is seen that in the plaint the revision petitioner/plaintiff had come forward with a specific case that the Valliammal had died intestate and when the written statement was filed stating that the said Valliammal had died after executing a registered will on 14.12.1973 in respect of the properties the plaintiff ought to have taken steps at that point of time and the amendment application has now been filed at the stage of arguments which is contrary to the provisions of Order VI Rule 17 read with Section 151 of the Code of Civil Procedure. The learned Principal

Subordinate Judge, Coimbatore has dismissed the said application.

5.Challenging the said order the revision petitioners are before this Court. Mr.R.Arun Shabari, learned counsel for the revision petitioners would contend that the omission to include the property was only by way of oversight and no motive could be attributed to the said omission and further he would point out that in paragraph No.6 of the counter statement filed by the 2nd respondent which is adopted by the 1st respondent in I.A.No.1344 of 2018 the respondents have stated as follows:

"This respondent submits with out prejudice to their contention in their written statement regarding the right title interest over the suit property, incase of the plaintiffs succeeding in the suit this respondents are agreeing that under equity the property proposal to be included in the plaint can be allotted to the plaintiff's share."

6.Per Contra, Mr.Govi Ganesan, learned counsel appearing on behalf of the respondents would contend that even as early as in the year 2013 the defendants have categorically stated that the property that is now sought to be included by way of amendment has been

bequeathed on them by the said Kandasamygounder by a registered will dated 14.12.1973 and that Valliammal died in the year 1979 and the will had come into force. Thereafter, the Kandasamy Gounder has sold the property and the same has been formed into layout and house sites and nearly 80 purchasers are now in possession of the suit property. He would rely upon the Judgement in ***Rajkumar Gurawara (Dead) Through Lrs. Vs. S.K.Sarwagi And Company Private Limited and Another*** reported in **(2008) 14 SCC 364** wherein the Honourable Supreme Court has held that where the plaintiff is not awakened to a statement that has been explicitly made in the written statement and had not taken steps to file an amendment immediately under provisions Order VI Rule 17 of the Code of Civil Procedure the amendment cannot be allowed.

7.As rightly argued by the counsel for the respondents herein the description of the properties that has been bequeathed by the late Valliammal has been clearly shown in the written statement. The plaintiff has not wakened up to file the necessary amendment immediately but has waited till such time the matter had been posted for arguments to take out the application. Applying the ratio of the

Judgement in ***Rajkumar Gurawara (Dead) Through Lrs. Vs. S.K.Sarwagi And Company Private Limited and Another*** reported in ***(2008) 14 SCC 364***, I find no infirmity in the order passed by the learned Principal Subordinate Judge, Coimbatore.

In the result, the Civil Revision Petition is dismissed. Consequently, connected Civil Miscellaneous Petition is also closed. There shall be no order as to costs.

19.02.2019

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Index : Yes/No
Speaking order/non-speaking order

To
The Principal Subordinate Judge,
Coimbatore.

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P.T.ASHA, J.,

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