



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2019

CORAM :

THE HONOURABLE MRS.JUSTICE **S.RAMATHILAGAM**

CRP(MD) No.1726 of 2017
and
C.M.P. (MD) No.9382 of 2017

Venkateswari

... Petitioner/3rd Respondent/3rd Defendant

vs.

Veeranan (died)

...Nil/1st Respondent/1st Defendant/
Petitioner

1.M.Imam Raja

... 1st Respondent/Petitioner/Plaintiff

2.V.Amma Pillai

... 2nd Respondent/2nd Respondent/
2nd Defendant

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 17.04.2017 made in I.A.No.684 of 2016 in O.S.No.157 of 2010 on the file of the District Munsif, Melur.

For Petitioner	: Mr.V.Sasikumar
For R1	: Mr.S.A.Ajmalkhan
For R2	: No appearance

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 17.04.2017 made in I.A.No.684 of 2016 in O.S.No.157 of 2010 by the learned District Munsif, Melur.

2.Before the trial Court, the petitioner herein is the third defendant, the first respondent herein is the plaintiff and the second respondent herein is the second defendant. For the sake of convenience, the parties will be referred to as per their rank before the trial Court.

3.I.A.No.684 of 2016 was filed by the plaintiff to amend the plaint. In the said I.A., the plaintiff contended that originally the suit in O.S.No.157 of 2010 was filed for permanent injunction by stating that the defendants have no right over the suit property and the third defendant is not a party to the main suit.



4.The first defendant in his counter statement has contended that the third defendant is a necessary person since the second defendant has made a sale in favour of the third defendant. Hence, the application in I.A.No.608 of 2010 was filed to implead the third defendant as he is a necessary party and based on the order passed in I.A.No.608 of 2010, an amendment was made in the said suit and the said amendment was carried out and now, the said suit has been posted for trial.

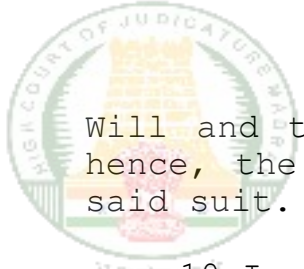
5.The third defendant is claiming right over the said sale deed, whereas, based on the said sale deed, no declaration was sought. Further, the Will dated 06.01.2003 was not considered by the Court below for marking the same.

6.In view of the above said changes made in the said suit, the plaintiff filed an application in I.A.No.684 of 2016 for amendment in order to avoid limitation for filing the suit to declare the sale deed as null and void, whereas, the defendants contended that the above said I.A., was filed only for the purpose of delaying the proceedings and the relief was sought for by the plaintiff at a belated stage. Hence, the defendants sought for dismissing the said application for amendment.

7.After observing the contention raised on either side, the trial Court found that only based on the written statement filed by the plaintiff, the third defendant was sought to be added as he is a necessary party and an amendment was sought to be made in the said suit. Hence, with a view to proceed with the case and to arrive at a decision, the said amendment sought by the plaintiff has to be done and the trial Court has discussed the I.A.No.320 of 2011 to amend the plaint and subsequent to that, the amendment was made. Further, the trial Court has also observed that so far, the trial has not been commenced and to arrive at a proper decision, the said amendment has to be made and there cannot be any delay on the part of the plaintiff. Hence, the said I.A., was allowed by the trial Court.

8.In I.A.No.684 of 2016, the plaintiff has also sought for the relief to amend the plaint in order to avoid limitation for filing the suit to declare the sale deed as null and void. Since the said sale deed based on the unregistered Will was not considered by the trial Court, the said Will was not marked before the Court below and the petition filed to that effect was dismissed by the Court below.

9.Now, the status of the case with regard to the said dismissal of the Will, the amendment was very much required in the suit and hence, the plaintiff filed the said petition for amendment. So, the earlier proceedings were taken by the Court below based on the claim made by the defendants in the written statement and hence, those amendments were carried out by the defendants. The said sale deed in favour of the third defendant was based on the unregistered



Will and the said Will was not considered by the Court below and hence, the said relief for amendment is very much essential in the said suit.

10. In view of the foregoing discussions, this Court is of the view that the order dated 17.04.2017 passed in I.A.No.684 of 2016 in O.S.No.157 of 2010 by the learned District Munsif, Melur, does not require any interference by this Court and the same is hereby confirmed and the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

The District Munsif,
Melur.

+1 CC to Mr.S.A.AJMAL KHAN, Advocate SR-63191.

+1 CC to M/s.V.SASI KUMAR, Advocate SR-63244.

**CRP(MD) No.1726 of 2017
26.04.2019**

CS: (06/06/2019) 3P 4C