



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2019

CORAM :

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CRP(MD) No.2124 of 2018

and

C.M.P. (MD) No.9406 of 2018

Palaniappan ... Petitioner/Respondent/first Defendant

vs.

1.Kamatchi ... Respondent/2nd respondent/2nd defendant

Sivam Ammal (died)

2.Narayanan

3.Kirubakaran

4.Sudharsanam

5.Dhamodaran

6.Kothai

7.Karuppanan @ Karuppan

... Respondents/Petitioners/2 to 7 plaintiffs

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 30.06.2017 in I.A.No.1157 of 2016 in O.S.No.289 of 2009 on the file of the District Munsif Court, Musiri.

For Petitioner : Mr.K.Govindarajan

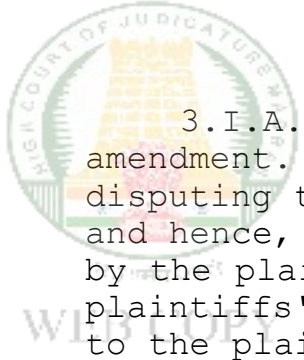
For Respondents

RR2 to 7: Mr.K.Mahendran

ORDER

This Civil Revision Petition has been filed to set aside the order dated 30.06.2017 passed in I.A.No.1157 of 2016 in O.S.No.289 of 2009 by the learned District Munsif, Musiri.

2.Before the trial Court, the petitioner herein is the first defendant, the first respondent herein is the second defendant and the respondents 2 to 7 are the plaintiffs 2 to 7. For the sake of convenience, the parties will be referred to as per their rank before the trial Court.

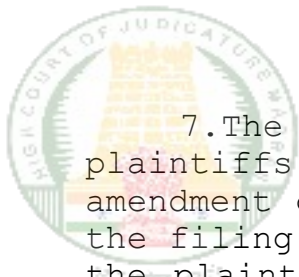


3.I.A.No.1157 of 2016 was filed by the plaintiffs seeking for amendment. The plaintiffs contended that the first defendant is disputing the right of the plaintiffs over the 'B' schedule property and hence, the relief of permanent injunction and declaration sought by the plaintiffs since the sale deed was executed in favour of the plaintiffs' mother. In the patta, a portion of property belonging to the plaintiffs was also sub-divided and separate patta was issued in the name of the plaintiffs. Hence, the plaintiffs stated that leaving the property belongs to the Marama Reddiyar, they seek relief in the 'A' schedule property to the extent of property belongs to them. Hence, for the said purpose, the plaintiffs have filed the said I.A., seeking for amendment.

4.Further, the plaintiffs contended that the first plaintiff died on 29.11.2013. Apart from the legal heirs already made on record in the said suit, there are several legal heirs, who are to be impleaded in the said plaint since the first plaintiff has not executed any document with regard to 'A' and 'B' schedule property. Hence, to avoid any litigations in future, the plaintiffs sought for the relief of declaration and also making such amendment for the said reasons. During the pendency of the said I.A., I.A.No.579 of 2014 was filed to implead the legal heirs of the plaintiffs and the same has been allowed by the trial Court and thereafter, for amendment, application in I.A.No.1041 of 2014 was filed. On enquiry, the trial Court ordered that separate application has to be filed and the same was returned. Hence, now it has become necessary for the plaintiffs to file the above said I.A., for amendment.

5.On the other hand, the defendants denied the all facts stated by the plaintiffs. Regarding 'B' schedule property, the patta was issued including the portion of the plaintiffs' property. Hence, the defendants are seeking the relief only to the extent to which they have been entitled and seeking no relief against the portion of the property, which belongs to the Marama Reddiyar, which are very much denied by the plaintiffs.

6.The trial Court on hearing the contention raised on either side, verified the documents and the facts stated by the plaintiffs and discussed elaborately by perusing that the claim made by the plaintiffs in the affidavit that who is the owner of the said property and what is the denial made by the defendants and the subsequent proceedings in the said suit were all very much observed by the trial Court especially, the date of the death of the first plaintiff and the subsequent proceedings regarding the impleadment of the legal heirs of the first plaintiff and what is the necessity arises for the plaintiffs for amendment was also very much observed by the trial Court. The said proceedings were also initiated immediately after the death of the mother of the plaintiffs 2 to 7, whereas, these facts were not stated by the plaintiffs. In that aspect, the trial Court has discussed elaborately since the amendment sought by the plaintiffs does not change the cause of action and does not cause any prejudice to the defendants.



7.The arguments advanced by the learned counsel for the plaintiffs were also discussed by the trial Court that the said amendment ought to have been filed within a period of 3 years after the filing of the written statement and hence, the petition filed by the plaintiffs is only to drag on the proceedings and there is no merit and those aspects were also very much discussed by the trial Court and it has given a finding that during trial, the amendment can be allowed if no injury or injustice is caused to the other side.

8.From the records, it is seen that the first defendant filed a writ petition against the order made by the revenue authorities by changing the patta and the said petition was also disposed of with a direction to dispose of the suit within six months and what is the prejudice will be caused to the first defendant are not properly explained.

9.Hence, the order dated 30.06.2017 passed by the trial Court is very much based on the facts and circumstances of the case and the trial Court has arrived at a proper decision. Thus, the order does not require any interference of this Court since the said amendment does not cause any prejudice to the first defendant. Though the present revision is filed in the year 2018, the learned counsel for the petitioner herein/first defendant was not ready to argue the matter on several number of hearings.

10.In view of the above, this Civil Revision Petition is dismissed with cost of Rs.500/-. The petitioners herein is directed to pay a sum of Rs.500/- to the credit of Chief Justice Relief Fund, Madurai Bench of Madras High Court, Madurai, within a period of 3 weeks from the date of receipt of a copy of this order and the learned District Munsif, Musiri, is directed to dispose of the suit in O.S.No.289 of 2009 within a period of six months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

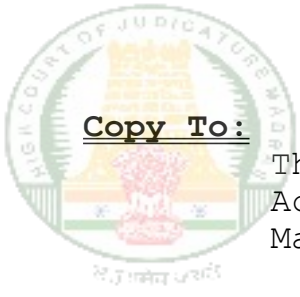
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Sub Assistant Registrar (CS)

Mm

To

The District Munsif,
Musiri.

**Copy To:**

The Section Officer,
Accounts Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.K.MAHENDRAN, Advocate (SR-60837[F] dated 12/04/2019)
+1 CC to M/s.K.GOVINDARAJAN, Advocate (SR-61044[F] dated 15/04/2019)

CRP (MD) No.2124 of 2018

ES/07.05.2019/4P/5C