



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P(MD)No.1063 of 2018

and

C.M.P. (MD)No.4633 of 2018

1.Tmt.Kamatchiammal

2.Tmt.Pandiselvi

...Petitioners / Petitioners/
Respondents 2 and 3

Vs.

1.Tmt.J.Muthulakshmi

...1st respondent / 1st respondent /
Appellant

2.Mr.S.Rameshpandian

...2nd Respondent / 2nd Respondent /
1st Respondent

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, against the order dated 16.04.2018 made in I.A.No.23 of 2016 in A.S.No.10 of 2015 on the file of the Subordinate Judge, Periakulam.

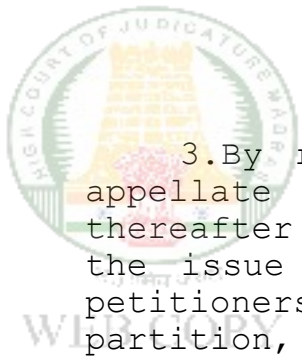
For Petitioners	: Mr.N.Dilip Kumar
For R-1	: Mr.R.Nandakumar
For R-2	: Mr.C.Jeyaprakash

O R D E R

This Civil Revision Petition has been filed against the dismissal of I.A.No.23 of 2016 in A.S.No.10 of 2015. The said application was filed for the purpose of amending the written statement filed by the petitioners / defendants 2 and 3. The Court below rejected the said I.A.No.23 of 2016 on the ground that it had been filed at the stage of appeal and therefore, it cannot be entertained.

2.According to the revision petitioners, the dismissal of appeal is unsustainable in law and on facts stating that there is no statutory enactment in filing amendment application at the stage of appeal. In this regard, the learned counsel for the revision petitioners referred the judgment of the Hon'ble Apex Court in

JASWANT KAUR v. SUBHASH PALIWAL, reported in **2010 (2) SCC 124**.

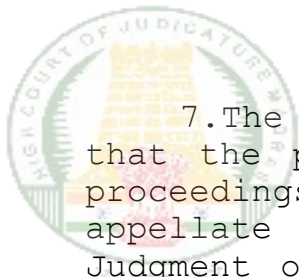


3.By referring the above Judgment, he would submit that the appellate Court can consider the amendment application and thereafter it can remand the matter to the trial Court to consider the issue afresh. Further, the learned counsel for the revision petitioners would contend that the suit is filed not only for partition, but also for a declaration that the registered Will, dated 13.08.1999, executed by one Santhanam Ammal is invalid. Even the said Will covers several properties of Santhanam Ammal and not all the properties therein are mentioned in the suit scheduled. The specific plea of partial partition had been omitted in the written statement. Further, the primary contention that the second item of the suit scheduled property has been purchased by the said Santhanam Ammal by a registered sale deed, dated 17.02.1973, had also not been specifically pleaded in the written statement. The said document had been already marked on the side of the defendants before the trial Court as Ex.B.3. Therefore, the petitioners filed I.A.No.23 of 2016 to amend the written statement filed by them in the original suit. The said application was dismissed. Hence, they have filed the present Civil Revision Petition.

4.The Court below should have considered the fact that Tmt.Santhanam Ammal died on 20.06.2000. So, there was an exchange of legal notices between the plaintiff and the first defendant even in the month of September, 2007 and after five long years, there were exchange of legal notices in September - October, 2012 culminating in the filing of a suit on 15.12.2012. By then, more than 12 years had elapsed from the date of demise of Santhanam Ammal and that Will dated 13.08.1999 had been acted upon and documents in proof had also been produced before the trial Court. Therefore, the revision petitioners submitted that they filed an amendment application to amend the written statement filed by the defendants 2 and 3 and add paragraph Nos.3(A) and 5(A) as stated in the amendment application. Therefore, the learned counsel submitted that as stated by the Court below, the intention of the revision petitioners is not to drag on the matter, but to bring out the real facts, which was omitted by the defendants 2 and 3 in the original written statement.

5.On the other hand, the learned counsel for the respondents vehemently opposed stating that the revision petitioners herein filed the above application for amendment only with the *mala fide* intention to drag on the proceedings of the Court. He would further submit that even the suit itself was dismissed and that in the appellate stage, the amendment of written statement cannot be permitted. Hence, the Court below has rightly dismissed the application and the same does not require any interference.

6.Heard the learned counsel appearing on either side and perused the records.



7.The Court below dismissed the application due to the reason that the present application has been filed only to drag on the proceedings and further, the Court below stated that at the appellate stage this application cannot be permitted. In the Judgment of the Hon'ble Supreme Court in **2010 (2) SCC 124 (cited supra)** , it was held as follows:-

"15.It was further submitted that the High Court should have appreciated the fact that there was no bar to the appellate Court permitting amendment of pleadings to enable a party to raise a new plea, as was held by this Court in Pandit Ishwardas v. State of M.P. In fact, this Court observed that all that was necessary was that the appellate Court should observe the well-known principles subject to which amendments of pleadings are usually granted. Naturally, one of the circumstances which would be taken into consideration before an amendment was granted is the delay in making the application seeking such amendment and, if made at the appellate stage, the reason why it was not sought in the trial Court."

8.In view of the above settled proposition of law, this Court is of the opinion that no doubt, in the present case, there is huge delay, however, in order to avoid the multiplicity of proceedings among the parties in future, there is no impediment for the first appellate Court to allow the application for amendment, which the Court below failed to do so.Further, the amendment sought for by the revision petitioner by virtue of adding paragraph Nos.3A and 5A of the petition, are also very vital to decide the present suit. But all these facts have not been considered by the Court below and in the interest of justice, the present application for amendment should be allowed. If this amendment is not allowed, the same will leave the multiplicity of proceedings and in order to avoid the same, the Court below should have allowed the present amendment, on the other hand, it has chosen to dismiss the present amendment petition. Hence, the order of the Court below is liable to be set aside. Accordingly, the order passed by the first Appellate Court in I.A.No.23 of 2018 in A.S.No.10 of 2015 is set aside and the application in I.A.No.23 of 2018 in A.S.No.10 of 2015 is allowed.

9.In view of the above amendment, the revision petitioner is directed to file an amended written statement within a period of two weeks from the date of receipt of a copy of this order before the first Appellate Court and that the first respondent herein is directed to file reply, if any, to the amended written statement within a period of two weeks thereafter. Thereafter, the appellate Court shall decide whether it is necessary to remand the matter to the trial Court in view of the present amendment and that the same shall be decided within three months from the date of receipt of a copy of this order, otherwise, the appellate court shall dispose of the appeal on merits within four months thereafter.



10.This Civil Revision Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

WEB COPY

/TRUE COPY/

Sub Assistant Registrar

rj2

To

The Subordinate Judge, Periakulam.

+1 CC to M/s.R.NANDAKUMAR, Advocate (SR-88128[F] dated 20/09/2019)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-88159[F] dated 20/09/2019)

**Order made in
C.R.P (MD)No.1063 of 2018
19.09.2019**

JM/25.10.2019/4P/4C