



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.04.2019

CORAM :

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THE HONOURABLE MRS.JUSTICE J.NISHA BANUC.R.P(PD) (MD)No.633 of 2011andM.P(MD)Nos.1 of 2011 and 1 of 2013

Mrs.Lakshmi

... Petitioner/Petitioner/
1st Defendant

vs.

1) Ponnammal

2) Ponnusamy

3) The Tahsildar,

Taluk Office,

Srivilliputhur Town.

4) Rajamani

... Respondents/Respondents/Plaintiffs

... Respondents/Respondents/Defendants No.2 and 3

Petition filed under Article 227 of the Constitution of India, against the order dated 26.11.2010 passed in I.A.No.1420/2010 in O.S.No.156/2007 on the file of the Additional District Munsif Court, Srivilliputhur.

For Petitioner

: Mr.M.Mariappan

For R1 & R2

: Mr.S.Jawahar

For R3

: Mr.J.Gunaseelan Muthiah

For R4

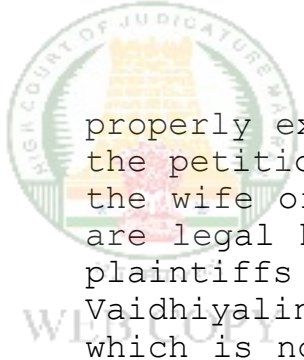
: Mr.G.Marimuthu

ORDER

Against the dismissal of the petition to receive additional written statement filed by the 1st defendant, this revision is filed by the 1st defendant.

2.The facts of the case are that the respondents 1 and 2/plaintiffs filed a suit against the revision petitioner and the 3rd respondent for declaration that they are the legal heirs of the deceased Balusamy. Thereafter, the 4th respondent herein filed impleading petition to implead himself as 3rd defendant in the suit stating that he is the legal heir of the deceased Balusamy which was allowed and accordingly he was impleaded as 3rd defendant. While so, the 1st defendant filed a petition to receive additional written statement, which was dismissed by the Court below, against which, this revision is filed.

3.Learned counsel for the petitioner would contend that though genealogy with regard to both parties were explained to the earlier counsel of the petitioner before the court below, it was not



properly explained by him in the earlier written statement filed by the petitioner. According to the learned counsel, the petitioner is the wife of the deceased Balusamy and the plaintiffs and defendants are legal heirs of Vaidhiyalingham and Govindan respectively and the plaintiffs in the plaint averments have stated that the said Vaidhiyalingham and Govindan are brothers of the deceased Balusamy which is not correct, but they are the sons of one Irulandi, who is the brother of deceased Balusamy and the same was left to be mentioned in the earlier written statement, but the Court below erroneously holding that the petitioner is the wife of one Shanmugavel, dismissed the petition to receive additional written statement, against which, this revision is filed.

4. Learned counsel for the respondents 1 and 2/plaintiffs would contend that the revision petitioner is the wife of one Shanmugavel who is also the brother of the deceased Balusamy and though in the earlier written statement, the petitioner has stated that the plaintiffs are legal heirs of Vaidhiyalingham and Govindan who were the brothers of the deceased Balusamy, quite contrary to the same, in the additional written statement, the petitioner has stated that Vaidhiyalingham and Govindan are sons of one Irulandi who is the brother of deceased Balusamy which is not correct. It is further submitted that deceased Balusamy was not married and the plaintiffs maintained the Balusamy till his death and they are the legal heirs of the deceased Balusamy as per the Hindu Succession Act and they inherited the movable and immovable properties of deceased Balusamy and the petitioner is having no relationship with deceased Balusamy and the allegation that the deceased Balusamy married the petitioner in the year 1970 is denied. Since the averments in the additional written statement and earlier written statement were inconsistent, the Court below dismissed the petition to receive additional written statement which does not require interference by this Court.

5. Learned counsel for the 4th respondent would contend that though the petitioner has stated that after the death of Shanmugavel, she married the deceased Balusamy in the year 1970, as per Ex.R1, the petitioner is receiving widow pension till date as wife of deceased Shanmugavel which fact was not disputed or resisted by the petitioner and it is the case of the plaintiffs that Balusamy died unmarried. Considering the above, the Court below has rightly dismissed the present petition which need not be interfered with.

6. Heard both sides and perused the records.

7. Perusal of record shows that though the petitioner has stated that after the death of her husband Shanmugavel, she married Balusamy, brother of Shanmugavel, as per Ex.R1, the petitioner is receiving widow pension till date as wife of deceased Shanmugavel which fact was not disputed or resisted by the petitioner. Though the suit was filed in 2010, it is not known why after a lapse of three years, the present petition to receive additional written statement is filed. Mere allegation that earlier counsel



misconceived the genealogy is not a valid ground to receive additional written statement. The petitioner was also receiving suit summons as wife of deceased Shanmugavel and she did not resist it at the time of filing written statement and even at the time of impleadment of the 3rd defendant, the petitioner did not take steps to rectify the defects. For the delay in filing the present petition, the petitioner has not offered any explanation. For accepting the new facts, the petitioner ought to have proved that she took due diligence at the earlier point of time and despite the same, she could not brought the same before the court. But, in the present case, the genealogy introduced in additional written statement is inconsistent with the earlier written statement and therefore, the learned Judge has dismissed the petition to receive additional written statement which does not call for interference at the hands of this Court.

Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

The Additional District Munsif,
Srivilliputhur.

+1cc to M/s.Special Government Pleader,SR.No. 60604

C.R.P(PD) (MD)No.633 of 2011

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KK/SAR/27.04.2019/ 3P- 3C

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