

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.R.P.(P.D).No.150 of 2019
and C.M.P.No.1310 of 2019

Thulasi Ammal (Died)

1.Govindammal

2.Vediammal

3.Thulasi

...Petitioners

Vs

1.Putti @ Parvathy

2.Indira

3.Lakshmi

4.Sivan

5.Vedammal

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Indian Constitution of India to set aside the fair and decreetal order dated 15.11.2018 passed in I.A.No.340 of 2018 in O.S.No.91 of 2004 on the file of the District Munsif Court, Utthankarai.

For Petitioners : Mr.P.Mani

For Respondents : No appearance

ORDER

This Petition has been filed to set aside the fair and decreetal order dated 15.11.2018 passed in I.A.No.340 of 2018 in O.S.No.91 of 2004 on the file of the District Munsif Court, Utthankarai.

2.The plaintiff-Thulasi Ammal filed the suit in O.S.No.91 of 2004. After the death of the plaintiff, her legal heirs/petitioners herein are added as a party to the above mentioned suit.

3.The suit has been filed for declaration of title over the suit properties and for permanent injunction restraining the respondents 1 to 5 herein from interfering with the possession and enjoyment of the suit properties.

4.Since the plaintiff/Thulasi ammal died, after filing the suit in O.S.No.91 of 2004, her legal heirs/petitioners herein are brought on record. Further, subsequent development in the Will executed by the plaintiff and her husband, warrants amendment in the suit and thereby the petitioners herein are filed the I.A.No.340 of 2018, on the file of the District Munsif Court, Utthankarai.

5.The trial Court after considering the arguments elaborately, partly allowed the petition by order dated 15.11.2018 in I.A.No.340 of 2018 in O.S.No.91 of 2004.

6.Therefore against the order of the trial Court in I.A.No.340 of 2018 in O.S.No.91 of 2004 dated 15.11.2018, the petitioner is before this Court with the present prayer.

7.The learned counsel for the petitioners submitted that the trial Court without understanding the full fact of the case, partially allowed the amendment and dismissed to amend the paragraph mentioned in the affidavit and petition Nos.9,12,13,14,18 and 19. The suit is filed for declaration and injunction, originally filed by the plaintiff-Thulasi Ammal. Pending suit, the plaintiff died. So that her legal heirs were impleaded as parties to the suit. In order to decide the title in favour of the petitioners and 5th defendant in the suit, all the amendment has to be carried out. The trial Court without considering the fact, disallowed the portion of the amendment. If the amendment is not carried out, the suit cannot be adjudicated completely and he further reiterated other grounds raised in the Civil Revision Petition and thus pleaded to allow this petition.

8.Heard the learned counsel for the petitioner and perused the materials on record.

9.Even though notice was served on the respondents through Court on 11.02.2019 and privately on 30.01.2019, none appeared on behalf of the respondents.

10.Originally the suit was filed by one Thulasi Ammal, against the defendants 1 to 4 for the relief of declaration of title over the plaint schedule properties and also for permanent injunction against the defendants. During the pendency of the case the plaintiff-Thulasi Ammal died and her legal heirs were impleaded as parties to the suit. Under these circumstances, the impleaded plaintiffs filed the amendment petition in I.A.No.340 of 2018 to amend the plaint. The trial Court after considering the arguments of the learned counsel for the parties partly allowed the amendment petition. With regard to the amendment mentioned in Nos.9,12,13,14,18 and 19, the trial Court in its order disallowed the above said portion on the ground that the revision petitioners/plaintiffs had not taken the step to amend the plaint much earlier and further stated that it will change the nature of the suit. But the trial Court has not explained how the amendment will change the nature

of the suit. The suit is being filed for declaration of title in favour of the revision petitioners/plaintiffs, the entire plaint has to be amended as required by the petitioners. The power to allow the amendment is wide and hence the Court should not adopt hyper technical approach, but on the other hand liberal approach should be the general rule. The technicalities of law should not be permitted to hamper the administration of justice between the parties and amendments are to be allowed in the pleadings to avoid multiplicity of litigation. So that, I am inclined to allow the Civil Revision Petition and directed the trial Court to allow the petitioners to amend the plaint and adjudicate the case.

11. In the result, order made in I.A.No.340 of 2018 in O.S.No.91 of 2004 dated 15.11.2018 is set aside and the Civil Revision Petition is allowed with no costs. Consequently connected miscellaneous petition is closed.

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No
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C.R.P.(P.D).No.150 of 2019

V.SIVAGNANAM.J,

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To
The District Munsif Court, Utthankarai.



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