IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.1067 of 2018 and
CMP No.5631 of 2018

1. Dhandapani
2. Murugesh
3. Chandrasekaran ... Petitioners

Vs

1. Indirani
2. Kasthuri Bai
3. Saroja @ Sarojini ... Respondents

Prayer: The Civil Revision petition filed under Article 227 of the Constitution of India, praying to set aside the Fair and Decreetal Order of the learned District Munsif Court, Palladam dated 22.12.2017 made in I.A.No. 488 of 2017 in O.S.No. 254 of 2008 by allowing the civil Revision petition.

WEB COPY

For Petitioners : Mr.B.Babu Varadharajan for
Mr.S.Sithirai Anandam

For Respondents : Mr.P.M.Duraisamy

http://www.judis.nic.in

O R D E R

The defendants in O.S.No.254 of 2008 have come up with this revision, aggrieved by an order allowing an application in IA No.488 of 2017, seeking amendment of the plaint.

2. The suit was originally instituted for the reliefs of recovery of possession, declaration that the settlement deed executed by the 1st defendant in favour of the 3rd defendant is null and void and not binding on the plaintiffs and for other reliefs.

3. The suit was resisted by the defendants contending that the suit has not been valued properly and in the absence of prayer for declaration of title, the suit is not maintainable. The validity or genuineness of the Will said to have been executed by the father of the plaintiffs on 18.12.2003, was also denied by the defendants. After the trial had commenced, the plaintiffs came up with the application in I.A No.488 of 2017 seeking amendment of the plaint to include the relief of declaration of title and also seeking to amend the valuation of the suit.

http://www.judis.nic.in

4. This application was resisted by the defendants contending that the application is belated. It was contended that being a post trial amendment, the plaintiffs are expected to give reasons as to why they did not file the application earlier. The lack of such averments in the affidavit was also specifically pointed out by the defendants in support of their case.

5. The learned trial Judge upon consideration of the pleadings in the affidavit as well as the counter affidavit concluded that since the plaintiffs are not introducing a new case and the amendments do not in any way prejudice the defendants, allowed the application.

6. The learned trial Judge did not consider the effect of proviso to Order VI Rule 17 of Code of Civil Procedure introduced by way of amendment in the year 2002 which prohibits a post trial amendment without an explanation being offered by the plaintiffs as to why the application was not filed earlier. The order of the trial Court is unsatisfactory.

WEB COPY

http://www.judis.nic.in

7. In view of the same, the order of the trial Court is set aside. The Civil Revision petition is allowed. The plaintiffs are permitted to file an additional affidavit explaining the reasons for not seeking an amendment earlier to satisfy the requirements of Proviso to Order VI Rule 17 of the Code of Civil Procedure. The petitioners herein are also permitted to file a additional counter affidavit.

8. The trial Court shall consider the reasons set out in the existing affidavit and the proposed affidavit to be filed and dispose of the application in accordance with law. The affidavit shall be filed by the respondents herein, within a period of 30 days from today. No costs. Consequently, connected miscellaneous petition is closed.

09.11.2020

Note : Time bound order
vum
Index: Yes/No
Speaking order / Non speaking order

WEB COPY

To

The District Munsif Court, Palladam.

http://www.judis.nic.in

R.SUBRAMANIAN, J.

vum

CRP (PD) No.1067 of 2018 and
CMP No.5631 of 2018

WEB COPY

09.11.2020

http://www.judis.nic.in