

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(PD).No.2440 of 2015

and

M.P.No.1 of 2015

Mayavathi

... Petitioner

Vs.

1.Tamilselvi

2.Muthulakshmi

3.Geetapalani

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, pleaded to allow the above Revision Petition by setting aside the dismissal of fair and decreetal order dated 12.12.2014 in I.A.No.920 of 2012 in O.S.No.204 of 2011 on the file of the District Munsif – cum- Judicial Magistrate Court at Sriperumbudur.

For Petitioners

: Mr.M.V.Seshachari

For Respondents

: No appearance

ORDER

This Civil Revision Petition has been filed by the petitioner/plaintiff against the dismissal of her Application in I.A.No.920 of 2012 in O.S.No.204 of 2011 on the file of the District Munsif-cum-Judicial Magistrate, Sriperumbudur dated 12.12.2014.

2.The petitioner herein had filed an Application in I.A.No.920 of 2012 in O.S.No.204 of 2011 on the file of the District Munsif-cum-Judicial Magistrate, Sriperumbudur under Order VI Rule 17 of CPC seeking relief of the court to amend the plaint. The learned District Munsif-cum-Judicial Magistrate had dismissed the said Application. Feeling aggrieved, the petitioner/plaintiff has filed the present Civil Revision Petition.

3.Since the private notice, which was sent to the respondents was not served, substituted service by paper publication was ordered. Accordingly, paper publication has been effected in one issue of Malai Malar and produced before the Court. Names of the respondents were also printed in the cause list. But, they did not appear either in person or

through counsel. Hence, after hearing the arguments of the learned counsel for the petitioner and perusing the materials filed before this Court, order is being passed in this petition.

4.The learned counsel for the petitioner has submitted that the petitioner herein had filed a suit in O.S.No.411 of 2000 on the file of the District Munsif of Poonamallee, for the relief of partition and subsequently, the said suit was transferred to the learned District Munsif-cum-Judicial Magistrate, Sriperambadur and renumbered as O.S.No.204 of 2011. He further submitted that during the pendency of the said suit, the petitioner herein had filed an Application in I.A.No.920 of 2012 under Order VI Rule 17 of CPC seeking leave of the Court to amend the plaint by furnishing particulars with regard to the source of income for purchasing the suit property by the petitioner's mother. The learned District Munsif cum Judicial Magistrate had dismissed the said Application by holding that if the proposed amendment is allowed, that it would amount to introduction of a new case. He further submitted that the proposed amendment will not introduce any new case and just to mention the source of income for purchasing the suit property in the name of the petitioner's mother, the said amendment was sought and

therefore, he prayed to allow this Civil Revision Petition and set aside the order passed by the learned District Munsif-cum- Judicial Magistrate in I.A.No.920 of 2012, and allow the said Application.

5.A perusal of the typed set of papers filed by the petitioner shows that she filed a suit in O.S.No.411 of 2000 on the file of the District Munsif, Poonamallee for the relief of partition and subsequently, the said suit was transferred to the District Munsif-cum-Judicial Magistrate, Sriperumbudur and renumbered as O.S.No.204 of 2011. In the plaint filed in the said Suit, the petitioner has stated that the suit property originally belonged to her mother Kaikesi and she died on 08.12.1994 intestate leaving behind her and the defendants 1 and 2 as her legal heirs. She further stated that since she is one of the legal heirs of her mother, she is entitled to one-third share in the suit property. The 1st defendant filed a written statement stating that the said Kaiges, bequeathed the suit property in her town under a registered Will dated 23.11.1994 and subsequently the said Kaikgesi died and thereafter, she became an absolute owner of the suit property, in which the petitioner is not having any share. Thereafter, the petitioner had filed an Application in I.A.No.920 of 2012 under Order VI Rule 17 of CPC seeking

permission of the Court to amend the plaint, as follows:

“The plaintiff's father Nagappan was employed as Lineman in TNEB and he died while he was in service on 23.07.1980. The Death-cum-Retirement benefits received by the plaintiff's mother, was utilised by the plaintiff's mother to purchase the suit property by way of separate two registered sale deeds dated 24.06.1981. Further, the plaintiff's mother was only a house wife and she never had any source of income at all”.

7.A bare reading of the aforesaid proposed amendment shows that the petitioner has set up the case that, her father was employed in TNEB and he died while he was in service on 23.07.1980. Out of her father's death-cum-retirement benefits, her mother had purchased the suit property under two registered sale deeds dated 24.06.1981. So, it appears that, the petitioner is trying to show that her mother is not the absolute owner of the property and she is only a name lender and that the suit property was purchased out of the death-cum-retirement benefits of the father. As already stated that the original case of the petitioner is that the suit property belonged to her mother absolutely and since her mother

died intestate, she is being a legal heir of her mother, she is entitled to a share in the suit property. After filing of the written statement by the 1st defendant stating that she is the absolute owner of the property by virtue of the Will executed by her mother, the petitioner/plaintiff has filed a petition to amend the plaint stating that the property was purchased out of the death-cum-retirement benefits of their father. So, it is clear that the petitioner is trying to introduce a new case. The learned District Musnif cum Judicial Magistrate relying upon the decision of this Court in *Sridhar Vs. Srinivasan, reported in 2009(1) CTC 516*, had dismissed the said petition. In the said decision it has been held that if amendment introduced a new case other than what was originally pleaded, the same cannot be allowed. Hence, this Court does not find any infirmity in the order passed by the Trial Court. Hence, this Civil Revision Petition is liable to be dismissed.

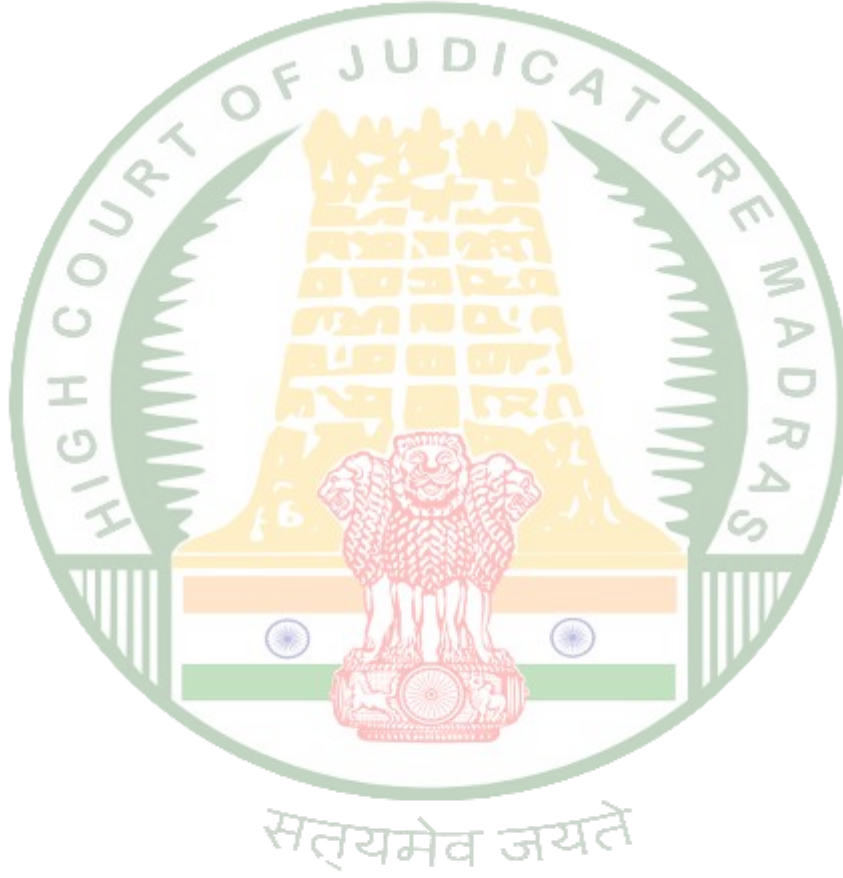
8. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

03.12.2020

Index : Yes/No
Internet : Yes/No
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To

The District Munsif – cum- Judicial Magistrate Court,
Sriperambadur.

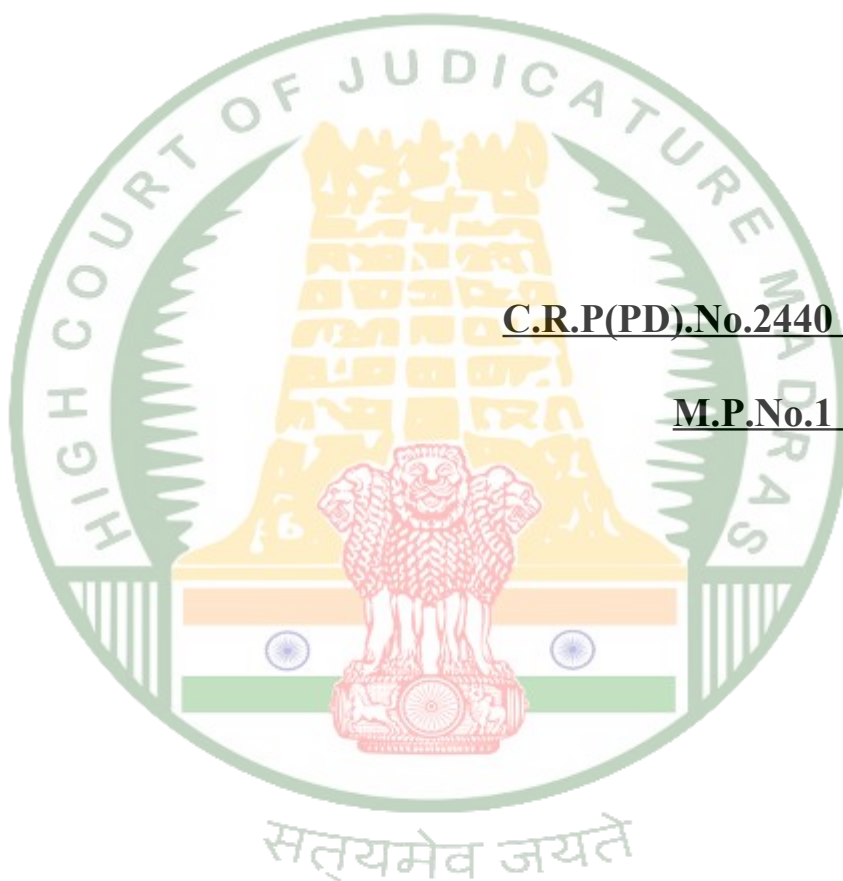


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