

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No. 2867 of 2018
and
C.M.P.No. 16587 of 2018

Munusamy Mudaliar (died)

1.M.Anusuya Ammal
2.M.Selvam
3.S.Rajakumari
4.M.Bhuvaneswari

...Petitioners

Vs.

1.Arul Nambi Rajan
2.Gnana Sundaram
3.Tashildar, Fort, Arni Taluk,
4.N.Duraiaraj
5.N.Sekar
6.Athmalingam
7.Dhaneshkumar

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 01.08.2018 made in I.A.No.123 of 2018 in O.S.No.66 of 2010 on the file of the District Munsif Court, Arni.

For Petitioners : Mr.A.Gouthaman

For Respondents : Mr.T.Aravind Gosh,
Special Government Pleader for R3

: Mr.C.Sathiah Kumar for

Mr.P.Seshadri for R4 and R7

O R D E R

The plaintiffs 2 to 5 in O.S.No. 66 of 2010 are on revision aggrieved by an order of the Trial Court made in I.A.No. 123 of 2018 rejecting the prayer sought for to amend the plaint.

2. The original suit was filed by one Munusamy Mudaliar seeking declaration of his title, permanent injunction restraining the defendants from interfering with his possession and other reliefs. Pending suit, Munusamy Mudaliar died on 22.07.2015. The present plaintiffs were brought on record as his legal heirs. The plaintiffs sought for amendment of the plaint by including certain documents namely, the Will and the settlement deed said to have been executed by Munusamy Mudaliar, which is prior to the suit. The amendment sought for was not to the prayer in the suit or the cause of action pleaded in the suit. The plaintiffs only wanted to include the following as paragraph 7a stating as follows:-

"1. After Para 7 and "7a. The plaintiffs submit that during the pendency of the above suit the 1st plaintiff Munusamy Mudaliar died on 22.07.2015. When Munusamy Mudaliar was in a sound disposing state of mind had executed a registered Will on 02.09.2009 thereby bequeathing the suit properties along with other properties to the plaintiffs 2 to 5. Thereafter, the said Munusamy Mudaliar had also executed a registered settlement deed on 10.03.2010, thereby settling the suit properties in favour of the plaintiffs 2, 4 and 5. The said settlement was accepted and acted upon. There was also delivery of possession. Now, the suit properties is enjoyed by the plaintiffs 2, 4 and 5. The borewell in the suit property was dug in the year 1990 itself by Munusamy Mudaliar. The said Munusamy Mudaliar had also spent more than Rs.60,000/- for deepening the well and for repairing and renovating the Well. The plaintiffs 2 to 5 are wife, son and daughter of Late.Munusamy Mudaliar."

3. This amendment was opposed by the defendants contending that despite the fact these documents have been executed even prior to filing of the suit, Munusamy Mudaliar had not chosen to disclose the same in the plaint. It was also pleaded that the settlement deed having been executed on 10.03.2010, Munusamy Mudaliar could not have asked for declaration of his title in the suit, which was presented on 11.03.2010. The Trial Court, accepted the defence and dismissed the application. Aggrieved, the plaintiffs have come up with this civil revision petition.

4. I have Heard Mr.A.Gouthaman, learned counsel for the petitioners, Mr.T.Aravind Gosh, learned Special Government Pleader for the 3rd respondent and Mr.P.Seshadri, learned counsel for the respondents 4 and 7. Other respondents though served, are not appearing either in person or through counsel, duly instructed.

5. Mr.A.Gouthaman, learned counsel for the petitioners would vehemently contend that the Trial Court was not right in dismissing the application for amendment, since the amendment would have the effect of other altering nature of the suit or the cause or action in the suit. All that was sought for is to introduce certain details regarding documents executed by Munusamy Mudaliar, prior to his death.

6. Contending contra, Mr.P.Seshadri, learned counsel for the respondents 4 and 7 would point out that if the Munusamy Mudaliar had executed a settlement deed on 10.03.2010 he could not have asked for declaration of his title in the suit which was instituted on 11.03.2010. He would also contend that these documents were executed prior to the suit and no reason has been assigned by the plaintiffs for failure on the part of the Munusamy Mudaliar to have not disclosed these documents in the original plaint. I have considered the rival submissions.

7 While considering a pre-trial amendment, the Court has to see only if the amendment results in changing the nature of the suit or the cause of action of the suit. Amendment giving details of the transaction will have to be liberally construed. In view of the same, I am unable to sustain the view of the Trial Court that the amendment would result in changing the nature of the suit. If the defendants are entitled to take any plea on the validity of those documents or maintainability of the suit, after the execution of the document it is open to them to do so by filing a additional written statement. I have no doubt that the Trial Court is not right in dismissing the application.

8. In view of the same, this civil revision petition is allowed, the order dismissing the I.A.No.123 of 2018 is set aside, the I.A.No.123 of 2018 will stand allowed. The plaintiff shall carry out the amendment and file an amended copy of the plaint within four weeks from the date of receipt of a copy of this order. The defendants will be entitled to file an additional written statement, if they are so advised. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To:

The District Munsif Court,
Arni.

+lcc to Mr.M.Suresh & A.Gouthaman, Advocate Sr.32566

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and
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