

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.924 of 2018 and
CMP No.5001 of 2018

1. Poongodi
2. Vishnuvardhan

..Petitioners

Vs.

1. Rajamani
2. Muthulakshmi
3. Sumithra Devi

... Respondents

Prayer: The Civil Revision petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 20.09.2017 in I.A.No.1334 of 2016 in O.S.No.417 of 2008 on the file of the District Munsif Court, Pollachi.

For Petitioners : Mr.G.Vijayakumar

For Respondents : Mr.C.R.Prasanan

ORDER

The defendants 1 and 2 in O.S.No.417 of 2008 have come up with this Revision, challenging the order of the trial Court made in I.A.No.1334 of 2016, an application for amendment of the plaint.

2. The suit was originally filed seeking declaration of title and consequential injunction by the plaintiffs who are the sisters of the husband of the 1st defendant and father of the 2nd defendant Thirumalaisamy. There is no dispute regarding the relationship between the parties. The plaintiff relied upon an unregistered family arrangement that is said to have been entered into on 12.07.2008 in support of their case.

3. The suit was resisted by the defendants contending that the family arrangement is not true. Though, the character of the suit properties as ancestral properties was admitted by the defendants 1 and 2, they claimed that the grandfather of Thirumalaisamy namely Kandhasamy Gounder has left a Will dated 13.09.1978 under which he had bequeathed

the property in favour of Thirumalaisamy, granting life estate in favour of his father Sivasubramania Gounder and his mother Marathal. Therefore according to defendants, Thirumalaisamy acquired absolute title to the suit property and the family arrangement said to have been taken place in the year 2008 was stoutly denied. During examination of the 1st plaintiff as P.W.1, she sought to produce the unregistered instrument of family arrangement dated 12.07.2008. The same was objected to. Therefore, the plaintiff came up with the present application seeking an amendment of plaint by including an alternative relief, declaring that the suit properties are undivided joint family of the plaintiffs and the defendants.

4. Along with this application, another application was filed in I.A.No.1335 of 2016 seeking to transpose the 3rd plaintiff as the 3rd defendant in the suit on the ground that she is not cooperating in the conduct of the suit.

5. The trial court by the impugned order dated 20.07.2017 allowed

both the applications.

6. Aggrieved by the order in Application No.1334 of 2016 namely the order granting the amendment as prayed for, the defendants 1 and 2 have come up with this Civil Revision petition.

7. I have heard Mr.V.Sundarraman, learned counsel appearing for the petitioner and Mr.C.R.Prasanan, learned counsel appearing for the respondents 1 and 2. Though the 3rd respondent has been served, she is not appearing either in person or through counsel.

8. Mr.V.Sundarraman learned counsel appearing for the petitioner would vehemently contend that the application itself is misconceived. The plaintiff cannot convert the suit for declaration of a exclusive title into a suit for declaration regarding the character of the property as Joint family property. He would also point out that on the same day, the plaintiffs have filed two applications; One in I.A.No.1334 of 2016 for amendment of the plaint and another one in I.A.No.1335 of 2016 for transposing the 3rd

plaintiff as the 3rd defendant. He would point out that while in the affidavit filed in support of I.A.No.1334 of 2016 which is one for amendment, on behalf of all the 3 plaintiffs, the 2nd plaintiff has filed an affidavit on behalf of all the three plaintiffs but in I.A.No.1335 of 2016 which is one for transposition she would state that the 3rd plaintiff is not cooperating in the conduct of the suit. On merits, the learned counsel would submit that the entire character of the suit changes. Therefore, the trial Court was not right in allowing the application for amendment.

9. Contending contra, Mr.C.R.Prasanan, learned counsel appearing for respondents would submit that so long as the 3rd plaintiff is transposed, she would remain as a plaintiff and therefore there was nothing wrong in including her as a petitioner in the amendment application. It is also his further contention that the character of the suit does not change. It is only because of the objection taken to the admissibility of the unregistered family arrangement dated 12.07.2008, an alternative prayer was sought to be introduced. This does not in anyway change the nature and character of the suit.

10. I have considered the rival submissions.

11. On the first objection regarding the filing of two affidavits on the same day, I do not find any merits. As on the date of filing of both the applications, the 3rd plaintiff remained only as a plaintiff and she was yet to be transposed. Therefore, when an application for amendment of plaint is sought to be filed all the three plaintiffs should be shown as petitioners and I do not see anything wrong in such affidavits being filed on the same day. On merits, I find that the character of the property as ancestral property had been specifically admitted in the written statement.

12. The defendant seeks to non suit the plaintiffs on the basis of the Will said to have been executed by Kandhasamy Gounder in the year 1978. It is for them to prove the Will to establish their exclusive title. In an application under Order 6 Rule 17 of Code of Civil Procedure, all that the Court has to see as to whether the nature and character of the suit is altered because of the amendment.

13. Originally the suit was filed for declaration of their exclusive title. Now, the plaintiffs only seek to introduce the alternative prayer seeking declaration that the suit properties were ancestral properties, belonging to the Joint family. I do not see such introduction of alternative prayer would alter the nature of the suit. The cause of action for the suit also cannot be said to be changed because the cause of action is the denial of the right of the plaintiffs on the basis of the Will of the year 1978 said to have been executed by Kandhasamy Gounder. I therefore see no reason to interfere with the order of the trial Court, allowing the application for amendment. The Civil Revision therefore fails and it is dismissed. No costs. Consequently connected miscellaneous petition is closed.

Vum

21.07.2020

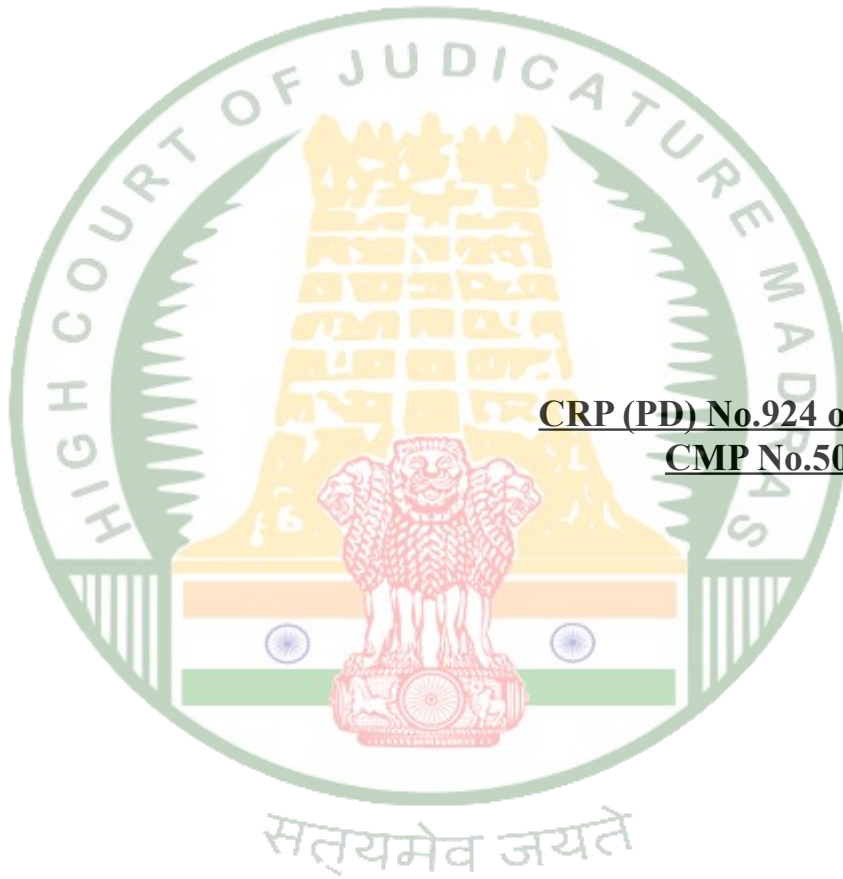
Index: Yes/No

Speaking order / Non speaking order

To:

1. The District Munsif,
Pollachi.
2. The Section Officer,
V.R. Section,
Madras High Court, Chennai.

R.SUBRAMANIAN, J.
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