

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 4.3.2020

Delivered on : 10.3.2020

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI

AND

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

O.S.A.No.365 of 2018

Mrs.Mekala

Appellant/Appellant/defendant

Versus

R.Navaneetham (Deceased)

1. R.Chandra Sekaran
2. R.Rajendran
3. R.Venkatesan
4. R.Kannan
5. P.Prema
6. H.Kumari

Respondents 1 to 6/Respondent1 to7
Plaintiff

7. R.Suganthi
8. K.Sundari
9. V.Latha

..Respondents 7 to 9/
Respondents 7 to 9/defendants1 to 3

10. S.Aruna

11. The Manager,
City Union Bank Ltd.,
Mandaiveli Branch,
Chennai 600 028.

12. The Manager,
The Tamil Nadu State Co-operative Bank,
South Mada Street,
Mylapore,
Chennai 600 004.

..Respondents 10 to 12/
Respondents 10 to 12/
Respondents 5 to 7

Prayer: Original Side Appeal filed under Clause 15 of the

Letters Patent read with Order 36 Rule 9 of Original Side Rules against the order dated 25.1.2017 in A.No.4792 of 2016 in C.S.No.622 of 2012 passed by this Court.

A.No.4792 of 2016: To amend the Written Statement filed by the 4th defendant by incorporating averments made in after para 10 the written statement in C.A.No.622/12 pending on the file of this Hon'ble Court.

CS.No.622/12: Plaintiffs 2 to 7 and Defendants 1 to 5 are already on record and the same recorded as Legal Representatives of Deceased 1st Plaintiff as per order dated 11.04.2016 on Memo.D.No.6264/16 dated 17.02.2016 in CS.No.622/12.

For Appellant : Mr.C.B.Muralikrishnan

For Respondent : Mr.A.Palaniappan for
Mr.R.Dasaratha Rao

JUDGMENT

(Judgment of the court was made by Dr.VINEET KOTHARI, J.)

The Appellant, Tmt.Mekala, wife of Mr.C.B.Muralikrishnan has filed the present Appeal aggrieved by the order dated 25th January 2017 passed by the learned Single Judge in A.No.479 of 2016 in C.S.No.622 of 2012, the Partition Suit filed by the Plaintiffs, Mrs.R.Navaneetham and others vs. Mrs.Sugandhi and others pending before the learned Single Judge.

2. The learned counsel Mr.C.B.Muralikrishnan is the husband of the Appellant.

3. The said Application in A.No.479 of 2016 was filed by Defendant No.4, viz., the present Appellant, seeking to amend the Written Statement filed by her in the Suit and to raise Counter Claim for Partition of the properties standing in the name of Plaintiffs 2, 3, 4 and 5, sons of late Radhakrishnan and Mrs.R.Navaneetham (since deceased) viz., R.Chandra Sekaran, R. Rajendran, R.Venkatesan and R.Kannan and other sisters Mrs.P.Prema and H.Kumari.

4. The reason assigned by the learned Single Judge in the Order dated 25.1.2017 for rejection of the Amendment Application are quoted below for ready reference:-

"6. In the light of the above submissions, the point that arises for consideration is whether the application for amendment of the written statement introducing counter claim is maintainable?

7. This application has been filed to amend

the written statement to introduce the counter claim claiming a share in the properties which are already settled in favour of the plaintiffs 2, 3, 4 and 5 and also the sale in favour of the defendants 3 and 4 by way of a sale deed. The main contention of the applicant is that though his father has started his own business, he has used the ancestral nucleus by selling the ancestral property in the year 1957 and used the sale proceeds for developing his business. Out of which, he has acquired several properties and those immovable properties were settled in favour of the plaintiffs 2, 3, 4 and 5 and also sold in favour of the defendants 3 and 4. Therefore, it is the contention of the applicant that those properties are to be treated as ancestral properties and as such she is entitled to a share in the above properties also.

8. It is to be noted that the applicant in her affidavit has stated that the ancestral property situated at Sholinganallur village was sold by her father for a sum of Rs.500/- in the year 1957. In the original written statement filed by the applicant on 30.07.2013, she has pleaded that the property situated at Sholinganallur was given to his father by his mother. Thereafter, his father has sold the same for a sum of Rs.3,500/- and utilized the sale proceeds for his business purpose and set up business and acquired several properties.

9. Except, this applicant, the other defendants have not raised any objection for partition of the amounts deposited in the bank. The suit itself has been filed for partition of the amounts deposited in the bank. The applicant having filed the written statement in the year 2013 and having pleaded that the property has been given to her father by his mother, now filing this application contending that the above property was ancestral property and the sale proceeds were utilized by her father for developing his business and thereafter he acquired several properties. The contrary stand taken by the applicant, one in the written statement and the present affidavit militates against her claim. She has stated in her written statement that the ancestral property was sold for a sum of Rs.3,500/- and wherein in the application she has stated that the ancestral property was sold by her father for a sum of

Rs.500/-.

10. Be that as it may. In the entire affidavit there is no mention whatsoever as to when his father purchased the immovable properties. The original written statement clearly indicate that the property existed in Sholinganallur was originally given by the applicant's grand mother to her father. That being the case, the question of treating the above property as ancestral property does not arise at all. Any property held by a female member prior or after the commencement of the Hindu Succession Act, shall be treated as the absolute property of the Hindu female as per Section 14 of the Act and as such the property devolved upon the legal heir of such female member can be construed only as a separate property. Therefore, the contention of the applicant that the above property is also an ancestral property cannot stand for legal scrutiny. Further, there is no pleadings, whatsoever in the entire written statement as well as in the present application and also in the additional written statement sought to be filed as to the nature of blending of so called property acquired by her father into common hotchpot.

11. Therefore, without pleadings in that regard and also without any evidence to show the existence of the property, the amendment to raise the counter claim to claim a share in the property of her father, which was already settled and transferred to other defendants is nothing but a futile exercise on the part of the applicant. It is further to be noted that in this case, trial was already commenced and P.W.1 was cross examined extensively. During cross examination, the applicant herein has canvassed the case as if the ancestral property was still in existence in Sholinganallur village. Except putting a suggestion to P.W.1, no materials, whatsoever, placed to show the existence of such property. Therefore, at every stage the applicant has taken inconsistent pleas about the so called ancestral property. Even the written statement also lacks pleadings as to the nature of the property and how his father has acquired the other properties, what was the ancestral source available at the relevant point of time etc. All these facts have not been pleaded in the application or in the written statement. Mere prayer to raise a counter claim

for partition of the properties, which admittedly stand in the name of other defendants alone sought. Such amendment will not serve any purpose. It is nothing but a futile exercise on the part of the applicant herein and the amendment is also sought after the trial was commenced and P.W.1 was subjected to elaborate cross examination.

12. To get over the admission or to fill up the lacunae, the applicant cannot be permitted to raise the grounds as and when desired. Having filed the written statement in the year 2013 and the application for amendment filed in the year 2016, such belated application also cannot be entertained by this Court. Of course, amendment is normally permissible for substantial justice. But the present amendment sought is in the nature of frivolous one, therefore, the same cannot be entertained by this Court. Hence, this Court hold that the amendment sought in the application will not serve any purpose to decide the rights of the parties as discussed above. Hence, this application is liable to be dismissed."

5. The learned counsel for the Appellant Mr.C.B.Muralikrishnan submitted that the property in question, for which the present Partition Suit was filed by the Plaintiffs is the cash balance in Bank Account, which accumulated out of the sale of the ancestral property made in the year 1957, for a sum of Rs.500/- and in the Written Statement filed by the Appellant it is sought to be stated that the property situated in Sholinganallur was given to his father by his mother and thereafter the father sold the same for a sum of Rs.3500/-, which was utilized for his business purpose, out of which the said Bank Balance accumulated, for which the Partition Suit was filed by the Plaintiffs and being a sister and co-parcener, she was also entitled to claim her share in the same and therefore, the amendment to raise such a counter claim became necessary and the learned Trial Judge erred in rejecting the same.

6. The learned counsel for the Appellant relied upon a decision of this Court in the case of KRISHNARU AND ANOTHER V. INCORPORATED AND UNINCORPORATED DEVASWAMS, (2005 (5) CTC 608) in which a learned Single Judge of this Court held that the amendment of Written Statement, where the proposed amendment is not changing the basic character or introducing new cause of action or inconsistent to the original pleas, that can be allowed.

7. Per contra, the learned counsel for the

Respondents/Plaintiffs submitted that the Application was filed belatedly and after the Cross-examination of PW1 was over and the Trial had already commenced in the year 2013 and the present Amendment Application was filed by her only in the year 2016 just to delay the Trial further and no such Counter Claim could be filed by her at such a belated stage and therefore, the learned Single Judge was right in dismissing the said Amendment Application.

8. Having heard the learned counsel appearing for the parties and upon perusal of the reasons given by the learned Single Judge in the order impugned before us, we are satisfied that there is no error in the Order of the learned Single Judge and the Amendment Application in question to raise the belated Counter Claim has been rightly rejected by the learned Single Judge.

9. Admittedly, this Application was filed belatedly in the present Suit. The learned Single Judge also observed in para 11 quoted about that except for putting a suggestion to PW1, no material, whatsoever was placed to show the existence of such property at Sholinganallur and in view of the inconsistent pleas taken by the Defendant about the property in question viz., the property is an ancestral property, the amendment sought for to be made in the Written Statement to make the Counter Claim could not be permitted.

10. The judgment relied upon by the learned counsel for the Appellant in KRISHNARU AND ANOTHER V. INCORPORATED AND UNINCORPORATED DEVASWAMS, (2005 (5) CTC 608) is of little help to the Appellant in the present case as the amendment sought to be made in the present case, viz., to raise a Counter Claim, is bound to change the character of the Suit and in the form of Counter Claim, a new claim is sought to be introduced by Defendant No.4 in the present case. Therefore, the said decision is not applicable to the facts of the present case.

11. We do not find any error much less a miscarriage of justice by the rejection of such Application seeking to amend the Written Statement being denied by the learned Single Judge. The present Original Side Appeal is, thus, found devoid of merit and the same is liable to be dismissed. Accordingly it is dismissed. No costs.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

ssk.

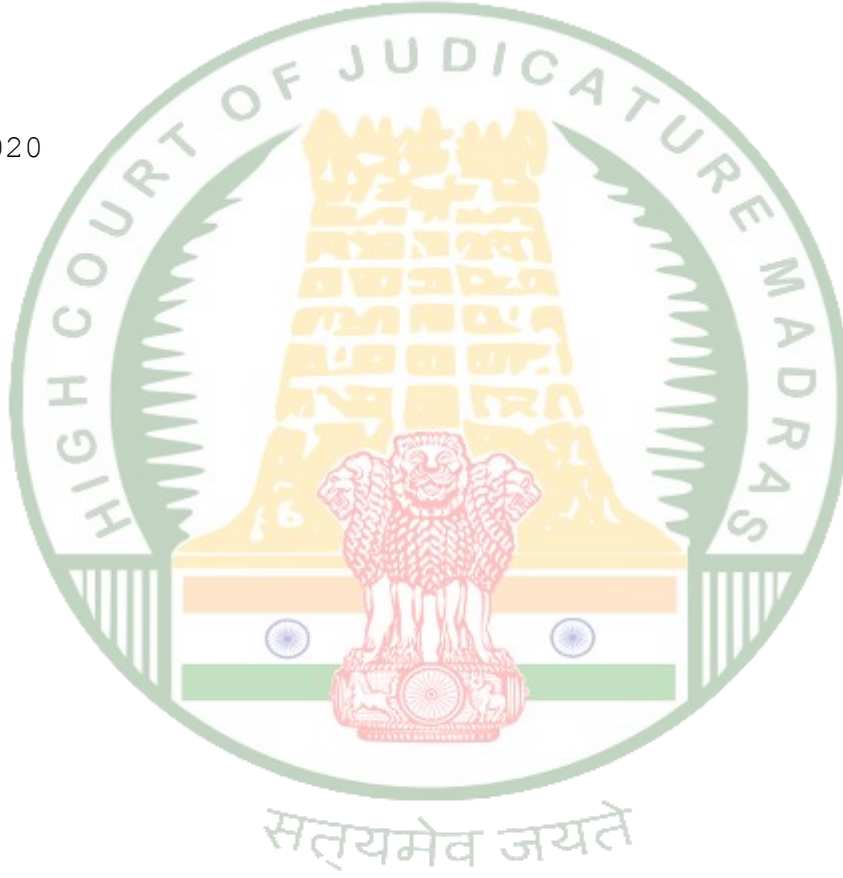
To:

1.The Sub Assistant Registrar
Original Side,
High Court, Madras-104

+1 cc to Mr.C.B.Muralikrishnan Advocate sr20799
+1 cc to Mr.R.Dasaratha Rao Advocate sr 21047

P.D. JUDGMENT IN
O.S.A.No.365 of 2018

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