

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2020

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P. (PD) No.3818 of 2017

and

C.M.P.No.17848 of 2017

1. Mrs.Balammal
2. Mr.Srinivasan
3. Mr.Nareshbabu

... Petitioners

Vs.

1. Mrs.P.Andal
2. Mrs.P.Lalitha
3. Mrs.S.Malliga
- Mr.M.Kannan (Died)
4. Mrs.Santhi @ Meenakshi
5. The Joint Sub Registrar-2,
Joint Sub Registrar-2 Office,
Ambattur, Chennai.

6. Joint Sub Registrar-2,
Joint Sub Registrar-2 Office,
near Thiruvathipuram Market,
Cheyyar Town & Taluk,
Thiruvannamalai District.

... Respondents

Prayer :- This Civil revision has been filed under section 115 of Code of Civil Procedure against the fair and decretal Order dated 15.02.2017 made in I.A.No.557 of 2016 in E.P.No.34 of 2008 on the file of the Subordinate Court, Cheyyar.

For petitioners : Mr. Shivakumar

For respondents : Mr. K. G. Senthilkumar

ORDER

This revision has been filed against the Order allowing the application filed by the respondents to amend the plaint.

2. Brief facts leading to filing of this revision is as follows :

The above suit has been filed for partition by the plaintiffs. The first defendant in the suit is the father of the plaintiffs and respondents 3 to 5 are his legal heirs. After commencement of trial, the first defendant died. Hence, the plaintiffs had filed an application to amend the plaint on the ground that on the death of the first defendant his share will devolve on his legal heirs. The said application has been allowed by the trial Court. Challenging the same, the present revision has been filed.

3. The learned counsel appearing for the petitioners submitted that the application for amendment has been filed on the ground that after the death of the first defendant, his share will devolve on his legal heirs and hence, it is necessary to amend the plaint. It has been further stated that the first defendant has executed a Will in favour of the petitioners and if the present amendment is allowed, it will cause irreparable loss to the

petitioners. Further, it is stated that earlier the plaintiffs have filed a petition for amendment of the cause title and the same has been allowed by the trial Court. Now the present petition has been filed to amend the prayer to amend entitlement of shares to the parties and if the amendment is allowed, it would cause severe prejudice to the petitioners and the same will change the cause of action and nature of the suit. Hence, the application filed for amendment has to be dismissed.

4. The learned counsel for the respondents submitted that after the death of their father, the share of their father will devolve on his legal heirs. Only in the said circumstances, the above application has been allowed by the trial Court. Hence, this revision is devoid of merits and has to be dismissed.

5. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents and perused the materials available on record carefully.

6. It is a suit for partition. The father of the plaintiffs, the first defendant died. The plaintiffs have filed an application for amendment on the ground that after the death of their father, his share devolves on his legal heirs. Only in such circumstances, the trial Court rightly allowed the

application. If the petitioners are claiming any right over the Will said to have been executed by their father, it is always open to them to agitate their right in proving the Will and they cannot resist the application filed for amendment. Hence, I do not find any illegality in the Order passed by the trial Court and this revision is liable to be dismissed.

7. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No cost.

10.02.2020

vrc

Index : Yes/No

Internet : Yes/No

Speaking order/non speaking order

To

The Subordinate Judge,
Cheyyar.

WEB COPY

V.BHARATHIDASAN, J.

VRC



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