



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.01.2020

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (PD) (MD) No.1960 of 2011

and

M.P (MD) No.1 of 2011

Natarajan ... Revision Petitioner/Respondent/Plaintiff

-Vs-

1. Paul Raj
2. Subbulakshmi
3. Rukmani
4. P.O. Dharmaraj Reddiar (Died)
5. Amathur Primary Agricultural
Co-operative Bank,
through its Secretary,
Amathur Village,
Virudhunagar District.
6. Joint Registrar No.2,
Office of the Joint Registrar No.2,
Katcherry Road,
Virudhunagar Town,
Virudhunagar District.

7. Ovammal @ Manjula

8. Prabhakaran

(Respondent No.2 recorded as Lrs
of deceased 4th respondent and
respondents 7 to 8 brought on
record as Lrs of deceased 4th
respondent as per order of Court
dated 05.10.2015) ... Revision Respondent/Petitioner/Defendant

Prayer: Civil Revision Petition filed under Article 227 of the
Constitution of India, setting aside the order dated 08.06.2011 in
I.A.No.16 of 2011 in O.S.No.43 of 2010, on the file of District
Munsif, Virudhunagar.

For Petitioner	:	Mr.S.Parthasarathy
For R1 to R3	:	Mr.N.Dilip Kumar
For R4 & R5	:	No appearance
For R6	:	Mr.N.Shanmugaselvam, Additional Government Pleader



ORDER

The plaintiff, in O.S.No.43 of 2020, aggrieved by the order of the trial Court allowing the amendment of the written statement, has come up with this Civil Revision Petition.

2. The suit in O.S.No.43 of 2010 was filed by the plaintiff seeking declaration of his title to the suit property, permanent injunction, declaration that the mortgage deeds executed on 06.08.2001 and 16.06.2008 are illegal and null and void and for costs of the suit. The plaintiff based his claim on a 'Will' said to have been executed by one Sankaralinga Reddiar and his wife Koodammal on 08.07.1970. According to the plaintiff, Sankaralinga Reddiar, who is the brother of his father Bodu Reddiar had no issues and he and Koodammal together had executed a 'Will'. Therefore, according to the plaintiff, the plaintiff would be entitled to the properties as per the said 'Will', dated 08.07.1970.

3. The defendants filed a written statement denying the execution of the alleged 'Will' by Sankaralinga Reddiar and his wife Koodammal. The status of the Koodammal as the wife of the Sankaralinga Reddiar was specifically denied and they claimed that she belongs to a different community. However, in paragraph-7 of the said written statement, it was averred as follows:-

"Similarly, the Sankaralingam Reddiar through Koodammal had given birth another daughter Subbulakshmi. When the daughter of Koodammal is available, then there is no scope for her to execute the alleged Will dated 08.07.1970 in favour of the plaintiff."

4. The plaintiff filed a reply statement, wherein, it was contended that the allegations in Paragraph-7 of the written statement to the effect that the Sankaralinga Reddiar had begotten Subbulakshmi through Koodammal is false.

5. To this reply statement, the defendants filed a additional written statement, wherein, it was contended that Sankaralinga Reddiar had in fact married one Guruvammal and through her he was blessed with a daughter by name Subbulakshmi. It is also contended that the Sankaralinga Reddiar had illicit intimacy with Koodammal and she was not the wife of the Sankaralinga Reddiar as alleged by the plaintiff. Realising the difficulty in explaining the contents of Paragraph-7 of the original written statement, wherein, Koodammal was described as wife of Sankaralinga Reddiar and mother of Subbulakshmi, the defendants came out with an application seeking amendment of the written statement claiming that there is a typographical error in paragraph-7 of the written statement, wherein, the name of the Koodammal has been typed instead of Guruvammal. Hence, the defendants sought for the following amendments:-



"1) In the written statement, in para 3, in page 2, in the first line, the word, "his wife" is to be deleted.

2) In the written statement, in para 7, in the 9th line from the top, the word, "Koodammal" is to be deleted and instead of, add, "Guruvammal" in that place.

3) In the written statement, in para 7, in the 10th line from the top, the word, "Koodammal" is to be deleted and instead of, add, "Guruvammal" in that place."

6. This prayer for amendment sought for was strenuously resisted by the plaintiff contending that this will amount to withdrawal of an admission made on the status of Koodammal. It was also contended that after filing of additional written statement setting up a new character called Guruvammal. The defendants are now trying to bring the original written statement in conformity with the additional written statement filed by them.

7. The trial Court, upon a consideration of the contentions of both the parties, concluded that the status of Koodammal was denied even in the original written statement in paragraph-4. As regards the description of Koodammal as wife of Sankaralinga Reddiar in paragraph-3, it was found that it was only an extract of what has been stated in the plaint, followed by a denial. The trial Court accepted the case of the defendants that the name of Koodammal was incorporated in Paragraph-7 of the original written statement by mistake, as more probable and the amendment being pre-trial amendment, should be viewed liberally also. On the said conclusion, the trial Judge allowed the application for amendment. Aggrieved, the plaintiff has come up with this Civil Revision Petition.

8. I have heard Mr.S.Parthasarathy, learned counsel appearing for the petitioner and Mr.N.Dilip Kumar, learned counsel appearing for the respondents 1 to 3.

9. Mr.S.Parthasarathy, learned counsel appearing for the petitioner would contend that the amendment would result in putting the cart before horse. It is his further contention that the defendants by way of this amendment are attempting to bring the original written statement in conformity with the additional written statement filed by them. According to the learned counsel for the petitioner, the same is not permissible. He would also point out that in para-7 of the original written statement, the plaintiff has very clearly stated that when the daughter of Koodammal is available, then there is no scope for her to execute the alleged 'Will' dated 08.07.1970 in favour of the plaintiff. Pointing out this specific allegation in the original written statement, Mr.S.Parthasarathy, learned counsel for the petitioner would contend that the word "for her" would mean only Koodammal because it is not the case of either of the parties that Guruvammal had executed the



had died. Therefore, according to Mr.S.Parthasarathy, the trial Judge was not justified in allowing the amendment who seeks to withdraw the admission made in the earlier written statement, after filing of the additional written statement.

10. Contending contra, Mr.N.Dilip Kumar, learned counsel appearing for the respondents 1 to 3 would submit that the amendment being a pre-trial should be considered liberally. He would submit that if paragraph 7 of the original written statement is not amended as prayed for, it will run counter to the claim made in para-4 of the said written statement. He would also further pointed out that the fact that Koodammal is not the wife of Sankaralinga Reddiar was specifically pleaded in para 4 of the original written statement itself. Therefore, no prejudice would be caused to the petitioner by the order of the Court allowing the amendment.

11.I have considered the rival submissions.

12. As regards the claim of Mr.S.Parthasarathy that the defendants are attempting to withdraw the admission made in the original written statement by way of amendment, I do not think that the same can be accepted. In para-4, there is a very specific denial of the status of the Koodammal as the wife of Sankaralinga Reddiar. It is also pleaded that the Koodammal belongs to a different community. However, in para 7, it is stated that Sankaralinga Reddiar had a daughter through Koodammal by name Subbulakshmi and when the daughter is available, there is no scope for Koodammal to have executed the 'Will' dated 08.07.1970 in favour of the plaintiff. Now, the present claim of the defendant is that this Koodammal in Para 7 is mistake and it should be Guruvammal. All that the defendants want is to substitute the name of Koodammal with Guruvammal. Whether the word for "her" would still militate against the defendant even after substitution is to be decided by the trial Court. This amendment may not have the effect of curing or withdrawing an admission. It is the settled position of law that the truth or falsity of claims, which are sought to be introduced by way of amendment cannot gone into while considering the request for amendment. It is for the trial Court to decide the question on the basis of evidence that is to be let in. I am sure that the trial Court will look into the pleadings as a whole and decide the issue after evidence is let in. As rightly pointed out by Mr.N.Dilip Kumar, the amendment sought for being a pre-trial amendment, should be considered liberally. Unless there is a withdrawal of admission made, the amendment cannot be refused. I therefore see no material irregularity in the order of the Courts below in order to enable me to interfere with the same, particularly, sitting under Article 227 of the Constitution of India. This Civil Revision Petition therefore fails and it is accordingly dismissed. Further, it is made clear that the trial Court will take into account the entire pleadings available on record at the time of trial and proceed to dispose of the suit in



accordance with law. It is needless to say that the plaintiff is entitled to file a reply statement to the amended written statement. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

WEB COPY

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

am

To

1. The District Munsif, Virudhunagar.
 2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)
- +1 CC to M/s.S.PARTHASARATHY, Advocate (SR-1440[F])
- +1 CC to M/s.N.DILIP KUMAR, Advocate (SR-1840[F])

C.R.P. (PD) (MD) No.1960 of 2011

10.01.2020

na (CO)

TR(28.01.2020) 5P 6C