



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 07.09.2020

CORAM :

WEB COPY

THE HONOURABLE MR. JUSTICE **N. SESHASAYEE**

C.R.P (MD) No. 2376 of 2013
and M.P (MD) No. 1 of 2013

Soosai Rajammal (died)

1. Francis Xavier

2. A. Sahayam

3. A. David

.. Petitioners/Petitioners/
Defendants 1, 6 to 8

Vs.

1. A. Saveriammal

2. Sebastian Arputharaj

3. Philomin Pragsy

4. Lourdummy Caroline

5. Fathima Christy

6. Sagayamary Shanthi Josephine

7. Mary @ Krus

8. Barbarammal

9. S. Anthonisamy

10. S. Savarimuthu @ Joseph

11. S. Arogyasamy @ Peter

12. S. John Peter

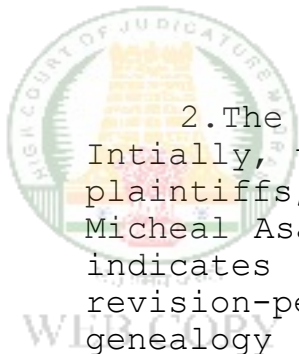
.. Respondents/Respondents/
Plaintiffs and Defendants 2 to 4

PRAYER: The Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the fair order and decretal order in I.A.No.369/2010 in O.S.No.331/2004 on the file of the Principal Subordinate Judge, Tiruchirapalli dated 10.09.2012.

For Petitioners	:	Mr.S.Ramesh
For Respondents	:	Mr.R.Maheshwaran for RR10 to 12 R3 & R8 - abated

ORDER

The defendants 6 to 8 are the revision petitioners herein. They had filed I.A.No.369 of 2012 to recieve an additional written statement and this was dismissed by the trial Court Vide its impugned order dated 10.09.2012. This is in challenge in this Civil Revision Petition.



2.The suit is laid for partition of the suit properties. Initially, there were 8 plaintiffs and 8 defendants. According to the plaintiffs, the suit property originally belonged to a certain Micheal Asari. The parties hereto are his descendents. The plaint indicates that a genealogy table was filed. According to the revision-petitioners, in the copy of the plaint served on them, the genealogy table was not appended. Therefore, in paragraph No.4 of their written statement, they made a pointed allegation, which is extracted hereunder;

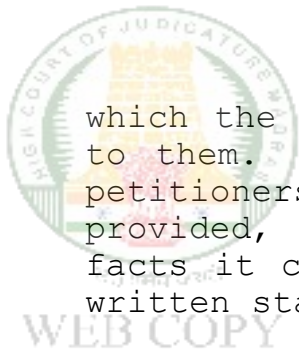
"...no genealogy has been enclosed as claimed in para 4 of the plaint. Thus the service of the plaint is improper. The relationship claimed in para 4 of the plaint has to be strictly proved, as the same is not admitted"

The trial of the case had commenced. Even then, the genealogy appended to the plaint was not served on the defendants. Mean while the 8th plaintiff died and his heirs were impleaded. According to the revision petitioners, one of the heirs of the deceased 8th plaintiff provided them with a copy of the genealogy that formed part of the original plaint to the revision petitioners, and that on perusing it they came to know that some of the parties who are necessary in a partition suit are not impleaded.

3. It is in this scenario, they filed a petition to reopen the case and to file an additional written statement. The learned trial Judge has dismissed the petition essentially on the ground that the petition is belated. To substantiate it, the learned Judge has recorded that the suit has been posted on several occasions and considerable time was lost and that the petition is filed very belatedly.

4. Before considering the merits of the submissions made, this Court intends to record that from the particulars of the various adjournments as given by the trial Judge in his order display an extraordinary generosity of the trial Judge (who may be more than one) in granting adjournments. It could well be interpreted as his absolute indifference to complete the trial with alacrity too. In fact, the case was posted for arguments on 03.09.2009, and between 03.09.2009 and 18.11.2009, at least 8 adjournments have been granted and thereafter, another 6 adjournments have been granted up to 05.01.2010 for the plaintiffs to address the Court. Thereafter, another 11 adjournments were granted for the defendants to address the Court. In between, one of the defendants had died and to bring his legal representatives on record, innumerable adjournments have been granted. It is in these circumstances, the learned trial Judge has at last realised that considerable time is lost.

5. However, the order which he passed does not address the issue in this case. As indicated above, even in their written statement the revision-petitioners had indicated that the genealogy



which the plaintiffs rely on in their plaint has not been supplied to them. In terms of strict letters of procedure law, revision-petitioners cannot be faulted. And, when a genealogy was ultimately provided, they get the first notice to know the correctness of the facts it contain. Justly, they are entitled to file an additional written statement.

6. In the fitness of things, the trial Court ought to have ensured that the defendants are provided with a complete plaint and not a partial copy of the plaint. This is a minimum rule of fairness and when it is not accomplished, then, the defendants cannot be faulted. When procedural fairness is denied, this Court has to interfere.

7. This case is pending from 2004 and given the pattern of adjournments the trial Court has granted, a reasonable blame for the pendency should go to it. It is now further delayed by another 7 years due to the pendency of this CRP.

8. Accordingly, this Civil Revision Petition is allowed and the fair and decretal order in I.A.No.369 of 2010 in O.S.No.331 of 2004 on the file of the Principal Subordinate Judge, Tiruchirapalli, dated 10.09.2012 is set aside. No costs. Consequently, the connected miscellaneous petition is closed. The trial Court is directed to complete the trial of the Suit in O.S.No.331 of 2004 on or before 31.01.2021.

Sd/-

Assistant Registrar (Records)

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/ /2020

Sub Assistant Registrar(CS)

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To

The Principal Subordinate Judge,
Tiruchirapalli.

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and M.P (MD) No.1 of 2013
07.09.2020

SRK (CO)
CS (23.09.2020) 3P 2C