



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.01.2020

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

C.R.P. (NPD) (MD)No.2413 of 2013

and

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

1.K.Balu (died)
2.Susila
3.Bablow Neruda Arora ... Petitioners

(Petitioner 2 and 3 are brought on record as legal heirs of the deceased sole petitioner, vide Court order dated 18.11.2019 made in CMP Nos.3849 to 3851 / 2019 in CRP 2413 of 2013)

vs.

K.Raju ... Respondent

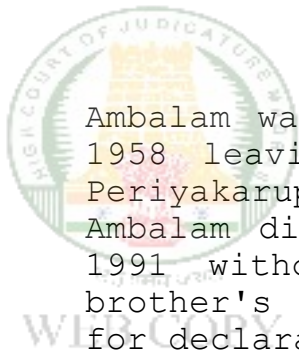
PRAYER: This Civil Revision Petition is filed under Section 227 of the Constitution of India, to set aside the order dated 12.10.2011 in I.A.No.770 of 2011 in A.S.No.133 of 2010 on the file of the II Additional Subordinate Court, Madurai.

For Petitioners : Mr.B.S.Meltiue
For Respondent : Mr.N.Vallinayagam

ORDER

This civil revision petition has been filed against the order of the lower appellate Court receiving additional written statement at the appellate Stage.

2. The suit in question was filed by the plaintiff / petitioner herein seeking declaration of his title and consequential injunction. According to the plaintiff, 1st and 2nd items of the suit schedule property belonged to P.Veeranan Ambalam and third item of the suit schedule property belonged to the father of the plaintiff namely V.Karuthandi Ambalam, who purchased the same under the registered sale deed, dated 22.05.1942. It is stated that Veeranan Ambalam died leaving behind two sons, namely Karuthandi Ambalam and Karuppanan Ambalam. Veeranan Ambalam's wife and his son Karuppanan Ambalam pre-deceased him. Veeranan Ambalam died in the year 1945 leaving behind Karuthandi Amablam as his heir. Karuthandi

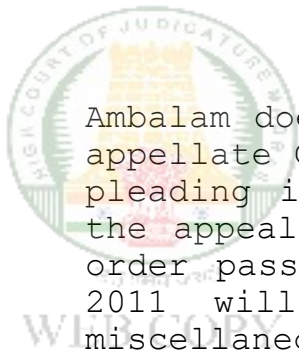


Ambalam was in possession of the property and he died in the year 1958 leaving behind his two sons namely, the plaintiff and one Periyakaruppan Ambalam. The plaintiff's elder brother Periyakaruppan Ambalam died in the year 1974 and his wife also died in the year 1991 without any issues. Thus the plaintiff succeeded to his brother's share also. On the above pleadings, the plaintiff sought for declaration of his title and consequential injunction.

3. The defendants 2 to 4 remained ex-parte. The first defendant resisted the suit contending that the suit property is ancestral property. It is his further claim that second and third defendants are the sons of Veeranan Ambalam and the fourth defendant was the father of one Karuppanan. According to the first defendant, the defendants 2 to 4 entered into an agreement of sale on 15.07.1998. Since they sold a portion of the property contrary to the agreement to the third party, there was a Panchayat between the parties and the defendants executed a sale deed in respect of the suit property in his favour on 30.07.1999. The trial Court concluded that the plaintiff has proved the genealogy pleaded by him. It was also held that the 1st defendant has miserably failed to prove that the defendants 2 to 4 are the sons of Veeranan Ambalam, original owner of the property. On the above said findings, the trial Court decreed the suit as prayed for. Aggrieved the defendants had filed an appeal in A.S.No.133 of 2010.

4. Pending appeal, an application was filed under Order 8 Rule 9 C.P.C., seeking leave to file additional written statement. The lower appellate Court allowed the application observing that the factum of existence of three daughters of Karuthandi Amabalam would be a relevant factor to be considered. I am afraid that such conclusion of the lower appellate Court cannot be sustained. Of course the Courts have power to receive additional written statement and pleadings at any stage of the proceedings. But the party seeking leave to file additional pleadings particularly in the appellate Court must show that such plea could not have been raised before the trial Court, despite exercise of due diligence.

5. Additional written statements should also set out precise particulars of all the facts that are sought to be pleaded. A perusal of the additional written statement filed in this case shows that required facts are not set out. Except the statement that Karuthandi Ambalam had three daughters, no particulars of the so called daughters are given. Existence or otherwise of the daughters of the Karuthandi Ambalam does not really a matter in the suit seeking declaratory decree, which is a decree in personal and it will not bind the persons, who are not parties to the suit. Even assuming that the daughters of Karuthandi Ambalam do exist, any decree passed in the suit will not bind them and they can always claim their right and seek partition, if they are so advised.



Ambalam does not really a matter and it will not preclude the lower appellate Court from examining the appeal on merits. The additional pleading in my considered opinion is not really germane to decide the appeal. Hence, this civil revision petition is allowed and the order passed in I.A.No.778 of 2011 is set aside and I.A.No.778 of 2011 will stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

The II Additional Subordinate Judge,
Madurai.

Copy to:

The Record Keeper, (2 Copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai

+1 CC to M/s.B.S.MELTIUE, Advocate (SR-2946[F] dated 24/01/2020)

+1 CC to M/s.N.VALLINAYAGAM, Advocate (SR-3080[F] dated
27/01/2020)

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