



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:28.09.2020

Coram:

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

C.R.P (PD) (MD)No.786 of 2014

and

M.P (MD)No.1 of 2014

WEB COPY

V.Irulayee

... Petitioner/Respondent/Plaintiff

.vs.

Periya Subbaiah Thevar(Died)

... Respondent/Petitioner/1st defendant

2.Muthirulayee

3.Meenal

4.Katirulan @ Sivanandi

5.Ayyammal

6.Rakkayee

7.Chinna Irulayee

8.Murugaiah

9.Eswari

10.Chokkalingam

... Respondents 2 to 10

(R2 to R10 are brought on record as the Lrs of the deceased sole respondent vide Court order dated 17.03.2017 made in C.M.P(MD)No.5579 of 2016 in C.R.P(MD)No.786 of 2014 by GJJ)

Prayer:-Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 31.01.2014 made in I.A.No.20 of 2014 in O.S.No.65 of 2012 on the file of the Subordinate Judge, Aruppukottai.

For Petitioner : Mr.S.Parthasarathy
For R-2 to R-10 : No Appearance

ORDER

This Civil Revision Petition has been filed by the respondent / plaintiff against the order passed by the learned Subordinate Judge, Aruppukottai in I.A.No.20 of 2014 in O.S.No.65 of 2012, dated 31.01.2014.

2. The petitioner herein has filed a suit in O.S.No.65 of 2012 on the file of the learned Subordinate Judge, Aruppukottai, for the relief of partition to divide the suit properties into three equal shares and allot one such share to her. The first defendant entered appearance through counsel and filed a written statement. Subsequently, he filed an application in I.A.No.20 of 2014 under



Order 6 Rule 17 r/w Section 151 of C.P.C, seeking permission of the Court to amend his written statement as mentioned in the said application.

3. The learned Subordinate Judge, Aruppukottai, by the order dated 31.01.2014, has allowed the said application on a condition that the petitioner therein, shall pay a cost of Rs.1000/- (Rupees One Thousand Only), to the respondent therein / petitioner herein. Feeling aggrieved, the petitioner / plaintiff has filed the present Civil Revision Petition.

4. The first respondent died. The learned counsel for the respondents 2 to 10, is not connected through video conference. In the last hearing also, the learned counsel for the respondents 2 to 10, not connected through video conference. Hence, after hearing the arguments of the learned counsel appearing for the petitioner and perusing the materials produced before this Court, order is being passed in this Civil Revision Petition.

5. The learned counsel for the petitioner has submitted that the first respondent has filed an application in I.A.No.20 of 2014 in O.S.No.65 of 2012 on the file of the learned Subordinate Judge, Aruppukottai, seeking permission of the Court to amend his written statement. He has further submitted that under the guise of amendment, the first respondent introduced a new plea as he gave the property to his son Chokkalingam and in pursuance of the same, patta has been transferred into his name and he is in possession of the said property and as such, he is a necessary party to the suit and since he has not been added as a party, the suit has to be dismissed for non-joinder of necessary party. He further submitted that the aforesaid amendment is virtually a new plea and the same cannot be entertained unless he has filed a petition, seeking leave to file additional written statement, but, the learned Subordinate Judge, Aruppukottai, without considering the aforesaid facts, has allowed the said application and therefore, he prayed to allow this Civil Revision Petition and set aside the order passed by the learned Subordinate Judge.

6. In support of his contention, the learned counsel for the petitioner has relied upon the decision reported in 2009(4) CTC 201 (P.A.Jayalakshmi v. H.Saratha and Others).

7. The first respondent / first defendant has filed I.A.No.20 of 2014 in O.S.No.65 of 2012, seeking to amend his written statement as to the following particulars:

(i) In the Genealogical tree mentioned in the written statement, the daughter of the third defendant namely Jeya has been wrongly mentioned and that should be read as the first defendant's daughter;



(ii) In the written statement, in number of places, he has stated as '6' and that should be read as '5 ¾'; and

(iii) To add the following portion after paragraph No.5 of the written statement,

'He gave the property to his son Chokkalingam and in pursuance of the same, patta has been transferred into his name and he is in possession of the said property and he is a necessary party and since he has not been added as a party, the suit has to be dismissed.'

8. Insofar as Clause (i) and (ii) of the amendments are concerned, there is no serious objection on the part of the revision petitioner / plaintiff. She opposed the said application only with regard to clause - (iii), of the amendment.

9. In the decision reported in 2009(4) CTC 201 (cited supra), the Honourable Supreme Court of India, in Paragraph No.8, has observed as follows:

"8. By reason of Code of Civil Procedure (Amendment) Act, 1976, measures have been taken for early disposal of the suits. In furtherance of the aforementioned Parliamentary object, further amendments were carried out in the year 1999 and 2002.

With a view to put an end to the practice of filing Application for amendments of pleadings belatedly, a Proviso was added to Order 6, Rule 17 which reads as under:

"17.Amendment of pleadings. - The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no Application for amendment shall be allowed after the trial has been commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

Order 6, Rule 17 speaks of amendment of pleadings whereas Order 8, Rule 9 provides for subsequent pleadings by a defendant. The distinction between the two provisions is evident. Whereas by reason of a former unless a contrary intention is expressed by the Court, any amendment carried



out in the pleadings shall relate back to the date of filing original thereof, subsequent pleadings stand on different footings."

10. From the aforesaid decision, it is clear that there is a distinction between the amendment of pleadings and subsequent pleadings. It is also clear that if the amendment is allowed, that shall relate back to the date of filing of original thereof unless a contrary intention is expressed by the Court, whereas subsequent pleadings stand on different footings.

11. In this case, during pendency of the present Civil Revision Petition, the first respondent / first defendant died and hence, his legal representatives have been impleaded as respondents 2 to 10. The said Chokkalingam has also been added as respondent No.10 in this Civil Revision Petition. He also will be added as a party in the suit and therefore, now the said Chokkalingam will become a party automatically. Therefore, this Court is of the view that nothing survives in this Civil Revision Petition. In view of the aforesaid decision of the Honourable Supreme Court of India, it is clarified that the said amendment came into force only on the date of amendment made in the written statement.

12. For the aforesaid reasons, this Civil Revision Petition is dismissed and the order dated 31.01.2014 passed in I.A.No.20 of 2014 in O.S.No.65 of 2012 on the file of the learned Subordinate Judge, Aruppukottai, is hereby confirmed though on different grounds. No Costs. Consequently, connected Miscellaneous Petition is closed. The petitioner is permitted to withdraw the cost which was deposited by the first respondent herein / first defendant before the trial Court.

Sd/-

Assistant Registrar (AS)

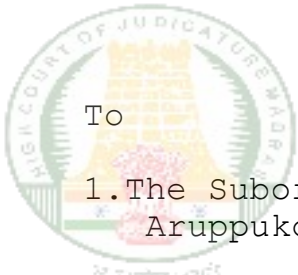
// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Pm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Subordinate Judge,
Aruppukottai.

Copy To:-

The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.S. PARTHASARATHY, Advocate (SR-18325[F] dated
29/09/2020)

C.R.P (PD) (MD) No.786 of 2014
28.09.2020

SCR(CO)

AP(12/10/2020) 5P 5C