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C.R.P.(MD)No.2592 of 2017:-

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.09.2020

CORAM

THE HON'BLE MR.JUSTICE S.S.SUNDAR

C.R.P. (PD) (MD)Nos.2592 to 2594 of 2017

and

C.M.P. (MD)Nos.11983 to 11985 of 2017

C.R.P. (MD)No.2592 of 2017:-

K.Kumaraswamee : Petitioner/2nd Repondent/
2nd Defendant
.. Vs ..
1.R.Jaya Nagammal
2.N.Thangammal : Respondents 1,2/Petitioners/
Plaintiffs
3.M/s.Indian Oil Corporation Limited,
No.2, Race Course Road, Chokkuklam,
Madurai-625 002. : 3rd Respondent/1st Respondent/
1st Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in I.A.No.284 of 2014 in O.S.No.204 of 2012, dated 31.10.2017 on the file of the I Additional Subordinate Court, Nagercoil.

For Petitioner : Mr.M.Srinivasa Raghavan
for Mr.L.Shaji Chellan
For R1 and R2 : Mr.D.Nallathambi
For R3 : K.Muralidaran

C.R.P. (MD)No.2593 of 2017:-

K.Ramakrishnan : Petitioner
.. Vs ..
1.R.Jaya Nagammal
2.N.Thangammal
3.M/s.Indian Oil Corporation Limited,
No.2, Race Course Road, Chokkuklam,
Madurai-625 002. : Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in I.A.No.283 of 2014 in O.S.No.201 of 2012, dated 31.10.2017 on the file of the I Additional Subordinate Court,



For Petitioner :Mr.M.Srinivasa Raghavan
For R1 and R2 :Mr.D.Nallathambi
For R3 :K.Muralidaran

C.R.P. (MD)No.2594 of 2017:-

N.Muthulakshmi : Petitioner

.. Vs ..

1.R.Jaya Nagammal
2.N.Thangammal

3.M/s.Indian Oil Corporation Limited,
No.2, Race Course Road, Chokkuklam,
Madurai-625 002.

4.R.Rajamony : Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in I.A.No.286 of 2014 in O.S.No.207 of 2012, dated 31.10.2017 on the file of the I Additional Subordinate Court, Nagercoil.

For Petitioner :Mr.M.Srinivasa Raghavan
For R1 and R2 :Mr.D.Nallathambi
For R3 :K.Muralidaran
For R4 :No Appearance

COMMON ORDER

C.R.P.(MD)No.2592 of 2017 is directed against the order passed by the learned I Additional Subordinate Judge, Nagercoil, in I.A.No.284 of 2014 in O.S.No.204 of 2012, dated 31.10.2017.

2.C.R.P.(MD)No.2593 of 2017 is directed against the order passed by the learned I Additional Subordinate Judge, Nagercoil, in I.A.No.283 of 2014 in O.S.No.201 of 2012, dated 31.10.2017.

3.C.R.P.(MD)No.2594 of 2017 is directed against the order passed by the learned I Additional Subordinate Judge, Nagercoil, in I.A.No.286 of 2014 in O.S.No.207 of 2012, dated 31.10.2017.

4.Heard the learned Counsel appearing for the revision petitioner and the learned Counsel appearing for the contesting respondents.

5.Brief facts that are necessary for the disposal of these revision petitions are as follows:



6.The respondents 1 and 2 in all the revision petitions are the plaintiffs in the sui in O.S.Nos.204, 201 and 207 of 2012 on the file of the I Additional Subordinate Court, Nagercoil. The prayer in all the suits are as follows:

"O.S.No.204 of 2012 is filed for permanent injunction restraining the defendants from proceeding further in connection with the reconstitution of the Kerosine Delaership (SKO dealership) firm at Nagercoil as per the application filed by the 2nd defendant and for a decree directing the first defendant to reconstitute the Kerosene Dealership (SKO Dealership) at Nagercol with the plaintiffs with 51% shares and the 2nd defendant with 49% shares.

O.S.No.201 of 2012 is filed for permanent injunction restraining the defendants from proceeding further in connection with the reconstitution of the Kerosine Delaership (SKO dealership) firm at Nagercoil as per the application filed by the 2nd defendant and for a decree directing the first defendant to reconstitute the Kerosene Dealership (SKO Dealership) at Nagercol with the plaintiffs with 51% shares and the 2nd defendant with 49% shares and for other reliefs..

O.S.No.207 of 2012 is filed for permanent injunction restraining the defendants from proceeding further in connection with the reconstitution of the Indian Oil Retail Outlet dealership at Nagercoil, as per the application filed by the defendants 2 and 3 and for a decree directing the 1st defendant to reconstitute the Indian Oil Retail Outlet Dealership firm at Nagercoil with the plaintiffs with 51% shares and the 2nd defendant with 49% shares."

7.It is the case of the plaintiffs in all the suits that the first plaintiff is the daughter of Late Sri.N.K.Ramaswamy and the second plaintiff is the wife of Late Sri.N.K.Ramaswamy. It is stated that Sri.N.K.Ramaswamy was appointed as dealer by Indian Oil Corporation for running petrol and diesel retail outlet. The plaintiffs' case is that after Sri.N.K.Ramaswamy was appointed as dealer, he constituted three different partnership firms for running three retail outlets as dealer of M/s.Indian Oil Corporation. The dispute arose after the death of Sri.N.K.Ramaswamy, upon the death of father, the plaintiffs claim to have succeeded to the estate of Late Sr.N.K.Ramaswamy in respect of his 51% share, as held in the partnership firm in the partnership firm business at Nagercoil.

8.Three suits are in relation to three different partnership establishments which are carrying on business as a dealer of



M/s.Indian Oil Corporation in Nagercoil. It is the case of the plaintiffs that after the death of Sri.N.K.Ramaswamy, the defendants have created documents to defeat the plaintiffs' right to succeed to the definite estate of father in all the partnership firms.

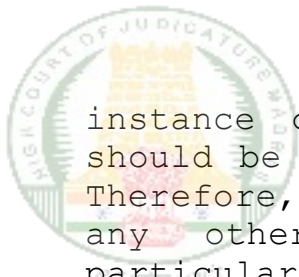
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9.During the pendency of the suits, the plaintiffs/respondents 1 and 2 filed interlocutory applications for amendment of plaint introducing the prayer for declaration declaring the plaintiffs' right to succeed to the estate of Mr.Late.N.K.Ramaswamy with respect of 51% share held by him in the partnership firm and to declare the alleged Will and the subsequent alienations in favour of one Sri.K.Kumaraswamee are void *ab initio* and not binding on the plaintiffs. Though the amendment petitions were opposed by the revision petitioners, the learned I Additional Subordinate Judge, Nagercoil, allowed all the applications. Aggrieved by the same, the above revision petitions have been filed.

10.The learned Counsel for the revision petitioners submitted that the lower Court allowed the amendment applications ignoring the fact that the amendment changes the entire character of the suits and that therefore, the petitions for amendment ought to have been dismissed by the trial Court. The learned Counsel for the revision petitioners further contended that the amendment cannot be permitted after the filing of written statement. The learned Counsel also submitted that the plaintiffs cannot be permitted to introduce new reliefs, which are not in consonance with the prayer, that was sought for as per the original plaint. It is also submitted that the declarative relief sought for by the plaintiffs after a long time is barred by limitation and that by allowing the amendment petition, the defendants will be deprived of their valid defence on the ground of limitation.

11.This Court has carefully considered the submissions of respective Counsel.

12.First of all, the amendment is only for introducing declarative relief, which are necessary to consider the relief of permanent injunction. The suit for permanent injunction on the assumption that the plaintiffs have the exclusive right. It is possible that such a suit for bare injunction can be maintained unless the suit is opposed by a person, who has a better title. In such circumstances, the amendment is to save the suit from being dismissed on a formal ground. The learned Counsel for the petitioner is right in saying that the petitioner cannot be deprived of their valid defence pointing out the question of limitation. However, that is a question to be decided based on facts and materials, that may be produced by the parties concerned. It is stated that whenever a plaint is amended at the



instance of one party, it is always required that other side should be given a fair opportunity to defend the case on merits. Therefore, the petitioners should be given an opportunity to raise any other grounds in addition to the existing grounds, particularly, regarding period of limitation. The lower Court though may consider such objection or defence that may be raised by the defendants. In the above circumstances, this Court is inclined to pass the following order:

13.These Civil Revision Petitions are dismissed. The orders passed by the learned I Additional Subordinate Judge, Nagercoil, in I.A.No.284 of 2014 in O.S.No.204 of 2012, I.A.No.283 of 2014 in O.S.No.201 of 2012 and I.A.No.286 of 2014 in O.S.No.207 of 2012, dated 31.10.2017, are confirmed. However, the petitioners in all the revision petitions, who are defendants 2 and 3 in the respective suits, are at liberty to raise any objections including the defence relating to limitation by way of additional written statement. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

cmr

To

1.The I Additional Subordinate Judge, Nagercoil.

2.The Section Officer-2 copies

V.R.Section,

Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.D. NALLATHAMBI, Advocate (SR-18583[F] dated 30/09/2020)

+1 cc to Mr.D.SRINIVASARAGAVAN , Advocate SR.No.18421

C.R.P. (PD) (MD) Nos.2592 to 2594 of 2017

29.09.2020

SJ(CO)

KM (22.10.2020) 5P 6C

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