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C.R.P(PD).No.548 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P.(PD).No.548 of 2019

and

C.M.P.No.3646 of 2019

S.Ramesh

... Petitioner

Versus

1.Sumathi

... 1st respondent

Kasthuri (Died)

... 1st respondent/1st defendant

2.Jayasree

3.Geetharani

4.Priya

5.J.Rashid Ahamed,

Carrying on business under the name and style,

Laya Electricals Hardwares,

No.156/3, S.S.Koil Street,

Pollachi.

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of CPC, praying to set aside the fair and decretal orders of the learned Subordinate Judge, Pollachi, dated 22.11.2018 in I.A.No.812 of 2017 in O.S.No.45 of 2010.



C.R.P(PD).No.548 of 2019

For Petitioner : Mr.V.Karthikeyan

For Respondents : Mr.T.M.Hariharan for R1
Mr.M.N.Balakrishnan for R5
No Appearance for R2 to R4

ORDER

This Civil Revision Petition has been filed against the fair and decreetal orders of the learned Subordinate Judge, Pollachi, dated 22.11.2018 in I.A.No.812 of 2017 in O.S.No.45 of 2010.

2. I.A.No.812 of 2017 in O.S.No.45 of 2010 was filed by the plaintiff/first respondent herein under Order 6 Rule 17 of CPC to amend the plaint as detailed in the petition.

3. On hearing both sides, the Trial Court allowed the said application. Aggrieved by the same, the 4th defendant, who is the brother of the plaintiff, preferred this revision.



C.R.P(PD).No.548 of 2019

4. At the time of the arguments, the learned counsel for the revision petitioner submits that the plaintiff/first respondent sought amendment by introducing 3A and 3B paragraphs in the plaint schedule after the death of his mother/first defendant. As per the submission in Paragraph No.3B (Proposed amendment), the plaintiff raised certain allegations which are defamatory and derogatory in nature and the same was also not required the plaintiff's claim over the suit property based upon the alleged registered Will said to have been executed by his mother dated 11.06.2017. Hence, those allegations are unwarranted one. Further, he has also contended that the trial Court without considering his objection, erroneously allowed the said application for amendment. Hence, he prayed to set aside the order passed by the trial Judge by allowing this revision petition.

5. The learned counsel for the plaintiff/first respondent was also heard and a perusal of the records reveals that in the year 2010 before the Subordinate Court, Pollachi, the plaintiff viz., Sumathy filed a suit for partition and other consequential reliefs against her mother, sisters and brothers. The revision petitioner viz., the 4th defendant/brother of the said plaintiff also contested the suit.



C.R.P(PD).No.548 of 2019

6. During the pendency of the suit, her mother/first defendant viz., Kasthuri passed away. As per the contention of the plaintiff, during her life time, her mother executed a registered Will bequeathing her legitimate share over the suit property in favour of her. Hence, he wants to amend the plaint accordingly. But disputing the said genuineness of the said Will, counter objection was filed in that amendment petition.

7. Section 68 of the Evidence Act requires that the Will has to be proved by examining any one of the witnesses. Therefore, the genuineness of the Will would be concluded only on examination witness and not at the interlocutory application stage. Furthermore, if the allegations are defamatory and derogatory in nature, the 4th defendant could very well submit his objection to that effect before the trial Judge during the cross examination of the witnesses and his objection at this stage is premature one. Considering all these objections, the trial Court rightly allowed the application which calls for no interference by this Court.

8. This Civil Revision Petition is dismissed as devoid of merits and confirming the order passed by the trial Judge. Since the suit is of the



C.R.P(PD).No.548 of 2019

year 2010, the trial Court is directed to dispose the suit as early as possible within a period of six months from the date of receipt of a copy of this order.

Consequently connected Miscellaneous Petition is Closed. No costs.

26.10.2021

Internet : Yes / No

Index : Yes / No

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To

The Subordinate Judge,

Pollachi.



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C.R.P(PD).No.548 of 2019

T.V.THAMILSELVI, J.

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C.R.P.(PD).No.548 of 2019

26.10.2021