

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No.1741 of 2015 and
MP.No.1 of 2015

P.Ramasamy

..Petitioner

Vs.

1.Kaliammal
2.P.Palanisamy(died)
3.P.Kuppathal
4.R.Palanisamy(died)
5.P.Ravichandran
6.Jothimani
7.Kalimuthu
8.R.Saraswathi
9.D.Sumathi
10.K.Muthusamy
11.Deivathal

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order dated 03.03.2015 made in IA.No.158 of 2015 in OS.No.220 of 2004 on the file of the District Munsif Court, Dharapuram, Tirupur District and allow this Civil Revision Petition.

For Petitioner : Mr.A.K.Sridharan

For Respondents

For R1 : Mr.S.Saravanan

R2 & R4 : Died

R3,5 to 11 : Notice served

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 03.03.2015 made in IA.No.158 of 2015 in OS.No.220 of 2004 on the file of the District Munsif Court, Dharapuram, Tirupur District.

2. The first respondent filed suit for partition in respect of the suit schedule property. After commencement of trial, the petitioner / plaintiff filed petition for amendment, which was allowed. Aggrieved by the same, the first defendant / first respondent preferred this Civil Revision Petition.

3. The learned counsel for the petitioner would submit that the suit filed by the first respondent is for partition. Thereafter he was examined as PW1 and the matter was posted for cross examination of PW1. While pending the suit, the second defendant died. Thereafter, the first respondent / plaintiff did not take any step to bring the legal representatives of the deceased second defendant on record. Instead of that, the first respondent filed petition for amendment to delete the second respondent from the plaint, since the second defendant died in the year 2008 and the third defendant executed release deed in favour

of the first defendant on 05.02.1996. Therefore, the second defendant is not a necessary party to the suit even at the time of filing of the suit. As such the first respondent / plaintiff have not impleaded the legal heirs of the second defendant. He further submitted that no such release deed is their and the second defendant never executed any release deed dated 05.02.1996 in favour of the first defendant. Further, admittedly the second defendant died in the year 2008 itself. Thereafter, the plaintiff did not take any step to bring the legal representatives of the second defendant. Therefore, the suit itself is bad for non joinder of necessary parties, since the suit is for partition and as such the plaintiff should have added all the parties of the family for partition. He also submitted that when the trial commenced, the first respondent / plaintiff cannot amend the plaint without sufficient cause. In support of his contention, he relied upon the judgment in the case of **Shanmuga Nadar Vs. S.Kamala** reported in **2014 (3) LW 121**, wherein it is held as follows:

"CPC Order 6 Rule 17 – Amendment of the trial commenced whether can be allowed – Application to restrict claim with respect to area sought, title to property Held: cannot be allowed meaning of "Any Stage" - It cannot be applied as proviso comes in."

4. The learned counsel for the first respondent / plaintiff submitted that the plaintiff was aged about 82 years at the time of filing of petition for amendment. As such, she was unable to trace out the release deed dated 05.02.1996. While pending the suit, she found the fact that the second defendant released his share in the suit schedule property in favour of the first defendant herein. Since the second defendant died in the year 2008, the plaintiff has no need to implead the legal heirs of the deceased second defendant, since already he executed release deed in favour of his share in favour of the first defendant herein. Therefore, the first respondent herein stated valid reason for amendment of the plaint and no prejudice would be caused to the petitioner herein. In fact, the trial court categorically recorded the reason for allowing the petition. Further the petitioner never denied the fact that the second defendant executed release deed dated 05.02.1996 in favour of the first defendant. Therefore, there is absolutely no prejudice would be caused to the first defendant herein for the amendment sought for by the plaintiff.

5. Heard, Mr.A.K.Sridharan, the learned counsel for the petitioner and Mr.S.Saravanan, the learned counsel for the first respondent.

6. The first respondent filed suit for partition. After commencement of trial, the first respondent herein filed petition for amendment to amend the plaint as follows:

(i) To insert the new para as '3 (a).The Plaintiff submit that the second defendant died in the year 2008. The second defendant and his mother 3rd defendant have executed a release deed in favour of first defendant on 05.02.1996. So the second defendant is not necessary party to the suit even at the time filing the suit. So the plaintiff have not implead the legal heirs of the second defendant' after the para 3 in page 3 in the plaint.

(ii) To insert as 'But the 2nd and 3rd defendants are executed the release deed of their share in the suit property in favour of 1st defendant on 05.02.1996. So the first defendant is only entitle the ¼ share in the suit property'. in 5th line before the word 'defendant' in para 4 in page 3 in the amended plaint.

(iii) To insert as 'against the defendant 1, and defendants 4 to 11' in page 5 in para 11 in second line after the word 'decree' in amended plaint.

(iv) To insert as 'and 4' in para 11(b) in 1st line in page 5 of amended plaint after the word 'defendants 1'.

(v) To delete the word 'to 10' in end of the line in para 11(c) in page 5 in amended plaint insert as 'and defendants 4 to 11' after the word 'defendants 1'.

According to the first respondent herein, the third defendant executed release deed in favour of the first defendant by the deed dated 05.02.1996. Thereafter he died in the year 2008. Therefore, there is absolutely no necessity for the first respondent to implead the legal heirs of the second defendant in the suit. Since the share of the second defendant was already released in favour of the first defendant, the second defendant is not a necessary party to the suit for partition. Further, the plaintiff is aged about 82 years at the time of filing the petition for amendment and as such she was unable to trace out the release deed executed by the second defendant in favour of the first defendant dated 05.02.1996.

7. That apart, on perusal of the counter filed by the petitioner herein, revealed that the first defendant never denied the release deed executed by the second defendant in favour of him. As rightly

observed by the trial court that if actually there was no such release deed in favour of the first defendant dated 05.02.1996, he would have naturally denied it as false. If he had denied it as false, there is no necessity for the plaintiff to amend the plaint and he should necessarily implead the legal representatives of the deceased second defendant. But the petitioner / first defendant neither admitted nor denied the alleged release deed dated 05.02.1996. Therefore, the judgment relied upon by the learned counsel for the petitioner would not help his case.

8. In view of the above discussion, this Court does not find any irregularity or infirmity in the order passed by the court below. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

05.01.2021

Speaking/Non-speaking order
 Index : Yes/No
 Internet : Yes/No
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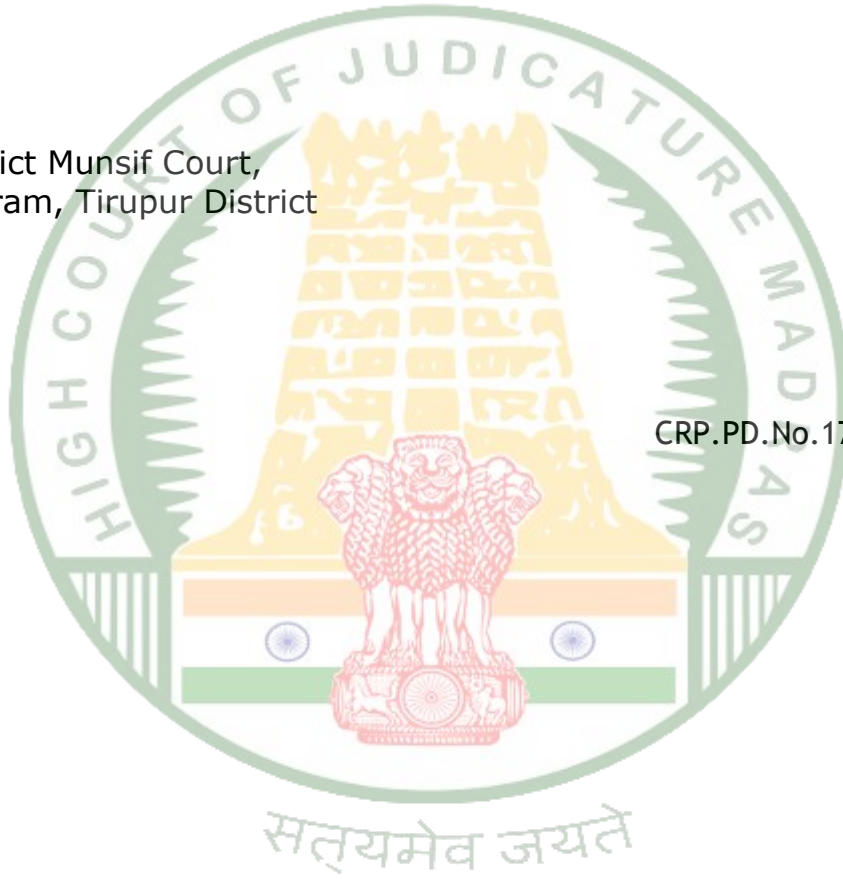
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G.K.ILANTHIRAIYAN,J.

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To

The District Munsif Court,
Dharapuram, Tirupur District



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