



C.R.P. (PD) No.590 of 2021
and CMP No.5106 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (PD) No.590 of 2021
and CMP No.5106 of 2021

Santhosam

.. Petitioner

Vs.

1. Jothivel

2. Suntharambal

3. Rajamani

4. Manimekalai

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal orders in IA No.3 of 2019 in OS No.106 of 1999 dated 21.02.2020, on the file of Principal District Munsif, Attur, Salem District.

For Petitioner : Mr. S.Kamadevan

For Respondents : Mr. L.Mouli



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ORDER

Challenge in this Revision is to the order of the Trial Court in IA.No.3 of 2019 in OS No.106 of 1999 dated 21.02.2020, an application filed by the plaintiff seeking to introduce additional pleadings under Order 8 Rule 9 of the Code of Civil Procedure.

2. The suit in OS No.106 of 1999 was filed by the plaintiff seeking declaration of title on the basis of an alleged oral partition that had taken place in the year 1989. According to the plaintiff, the suit property belonged to one Ayyakkannu Udayar, father of the plaintiff and it was allotted to her in a partition that took place ten years prior to the filing of the suit i.e., 1999.

3. The suit is being resisted by the defendants raising various contentions. Pending suit, the plaintiff came up with the instant application in IA No.3 of 2019 seeking leave to file additional pleadings. As per the additional pleadings, the plaintiff sought to introduce another source of title under a Will dated 01.02.1995 said to have been executed by the parents of



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the plaintiff while they were in sound disposing state of mind. According to the plaintiff her father Ayyakkannu Udayar, died on 23.03.2010 and mother Nallammal died on 03.03.2017. Therefore, after the death of the parents, she became entitled to the suit property.

4. The learned Trial Judge concluded that an application of this nature has to be treated as an application under Order 6 Rule 17 of the Code of Civil Procedure and the same has to satisfy the requirements of the proviso to Order 6 Rule 17 CPC, inasmuch as the application has been filed after commencement of trial. Finding that no reason has been assigned by the plaintiff for not filing the application earlier in point of time i.e., prior to the commencement of trial, the learned Trial Judge dismissed the application.

5. I have heard Mr.S.Kamadevan, learned counsel appearing for the petitioner and Mr.L.Mouli, learned counsel appearing for the respondents.

6. Mr.S.Kamadevan, learned counsel appearing for the petitioner



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would vehemently contend that the Trial Court was not right in treating the application as one under Order 6 Rule 17 CPC and requiring the plaintiff to satisfy the requirements of the proviso to Order 6 Rule 17 CPC. He would further contend that the mother, who was a joint executant of the Will, had died only in the year 2017, and therefore the application cannot be termed as belated. The learned counsel would also contend that all that the plaintiff is seeking to introduce is a new source of title and she can succeed on the basis of the title even if her claim for oral partition is negative.

7. I am unable to agree with the contentions of the learned counsel for the petitioner. The petitioner is the plaintiff in the suit, she has come up with this specific case of oral partition in the year 1989, if her case of oral partition is accepted then the father Ayyakkannu Udayar and the mother Nallammal would not have title to the property in the year 1995, in order to enable them to execute the Will. It is fundamental position of law that the plaintiff cannot take two conflicting stands or mutually destructive pleadings. The original plea of the plaintiff is that there was a partition in the year 1989 and she was allotted the suit property in the said partition. The



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said plea impliedly divests the title of Ayyakkannu Udayar and Nallammal over the property in the year 1989 itself. If the present plea of the plaintiff is to be accepted, the same will run counter to the original pleading, since the present plea is that Ayyakkannu Udayar and Nallammal executed a Will in the year 1995 in favour of the plaintiff.

8. Dehors the reason assigned by the Trial Court, I am of the opinion that the plaintiff cannot be allowed to introduce mutually destructive pleadings and the application is liable to be rejected on the aforesaid ground. Hence the Civil Revision Petition is **dismissed**. Consequently, the connected miscellaneous petition is closed. No costs.

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Index: No
Internet: Yes
Speaking order
jv



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R.SUBRAMANIAN, J.

jv

To

1. The Principal District Munsif,
Attur,
Salem District
2. The Section Officer, V.R.Section,
High Court of Madras.

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