

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.03.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.3155 of 2019 and
C.M.P.No.20591 of 2019

1. R.Emarose Ammal
2. E.Umamaheswari
3.R.Ashok Kumar

... Petitioners

Vs.

1. S.Palani
2. S.Krishnamurthy
3. Chandra
4.Ramani

... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India against the Fair and Decreetal Order dated 05.07.2019 passed in I.A.No.1 of 2019 in O.S.No.32 of 2014 by the learned District Munsiff, Ponneri.

For Petitioners : Mr.P.V.Muralidhar
For Respondents : Mr.R.Krishnaswamy

O R D E R

The present Civil Revision Petition has been filed under Article 227 Constitution of India seeking to set aside the order dated 05.07.2019 passed in I.A.No.1 of 2019, which was filed under Order 6 Rule 17 seeking to amend the plaint in O.S.No.32 of 2014 raising various grounds.

2. The respondents herein, who are the plaintiffs had filed a suit in O.S.No.32 of 2014 seeking a prayer for declaration of rights and title to the suit property and for consequential relief of permanent injunction. The respondents have also sought for the declaration that the Settlement Deed dated 01.08.2013 executed by the 1st defendant in favour of the 2nd defendant therein in respect of the suit property as null and void and not binding and consequently to grant relief of permanent injunction restraining the defendants 2 and 3 therein from alienating and encumbering the suit property to any one without the knowledge and consent of the plaintiffs in Survey no. 247/4 at Alamathi Village in Ponneri Taluk, Thiruvallur district measuring 20 cents on the south out of 40 cents with

specific boundaries and also for other reliefs. Pending suit, the present revision petitioners / defendants filed the written statement as early as 26.03.2014 and I.A.No.1 of 2018 in O.S.No.32 of 2014 was filed by the plaintiffs seeking for amendment of plaint to insert Paragraph No. 22 (a) after Paragraph No.22 in plaint and the same was allowed by a fair and decreetal order dated 05.07.2019 by the learned learned District Munsif, Ponneri. Challenging the same, the present Revision Petition is filed by the petiitoners / defendants.

3. The learned counsel appearing for the petitioners would contend that the amendment sought for by the plaintiffs will change the basic nature of the suit and fundamentally, it would cause civil hardship, as it will amount to permitting the plaintiffs to raise new pleadings

4. The learned counsel for the petitioners would further contend that the order allowing the amendment as against the provision of Order 6 Rule 17 of CPC, cannot be sustained, since no permission or leave was obtained by the plaintiffs to file additional documents, based on which the amendment was sought for.

5. The learned counsel for the petitioners submits that the amendment purported to be brought in will change the entire cause of action for the suit and the amendment ought not to have been allowed by the court below. He would also submit that the issues were already framed in the suit and the same was listed for plaintiffs' side evidence and now, it is posted for trial. The amendment now being sought for in the application, ought not to have been allowed.

6. In contrary, the learned counsel for the respondents would contend that the trial court after hearing both the parties was pleased to allow the application holding that the amendment sought for does not change the nature of the suit and the amendment sought to be made in the plaint is only a additional pleadings to the existing pleadings and by referring to a registered Will of the year 1968, which was in support of the pleadings and no new facts have been brought in to change the nature of the suit, hence pleaded to dismiss the petition.

7. Heard both the learned counsels and perused the materials available on record.

8. The amendment sought for to be introduced immediately after Paragraph No.22 as Paragraph No.22(a) is as follows:-

"22-a) The plaintiffs further submit that it is only after suit that too recently the plaintiffs came to know from their relatives that Vaduvambal, who is

the paternal grand mother of the plaintiffs even during her life time on 05.02.1968 executed and registered a Will in favour of her son Swamintha Mudaliar, father of the plaintiffs as well as in favour of her daughter Sulochanammal in respect of the properties owned and possessed by her, that the said Will was duly registered in Book-III as Document Number 4 of 1968 on the file of the Sub-Registrar Office at Thiruvallur. That under the said Will she has bequeathed her properties to her son and daughter and thereby bequeathed the A schedule properties under the said Will in favour of her son Swamintha Mudaliar and bequeathed the B schedule properties under the said Will in favour of her daughter Sulochanammal. That the present suit property measuring 20 cents on the south along with the remaining extent of 20 cents on the north totally measuring 40 cents comprised in S.No.247/7 was one of the A schedule property bequeathed under the said Will. The original of the said Will has been lost and the same could not be traced out. Hence the plaintiffs have obtained the certified copy of the said Will and the said document being an ancient document it requires no further proof and as the original of the said Will is lost there will not be any impediment in producing the certified copy thereof. A perusal of the said registered Will will show that the entire land in S.No.274/7 inclusive of the suit property was dealt with by Vaduvambal during her life time itself"

9. At this juncture, on a plain reading of the abovesaid portion of amendment, which was purported to be introduced in the plaint and on conjoint reading of both the plaint and the said amendment, this Court do not find any material that is prejudicial to the petitioners / defendants' interest in the suit. As there is no amendment sought to the prayers that are prayed in the plaint already and in consequence, the amendment sought to be introduced, only as an additional pleading, the trial court has rightly allowed the amendment sought for and the order passed by the trial court need not be interefered with, as the amendment was rightly allowed by the court below.

10. Moreover, unless and until the amendment sought to be introduced is changing the nature of the suit or when the application seeking amendment is prejudicial to the petitioners / defendants, the amendment should not be allowed. However, when the amendment sought to be introduced does not change the nature of the suit and the amendment that is to be introduced in support of other pleadings, there is no reason stated by the counsel for the petitioners that why such

amendment should not be allowed. As it is only a certified copy of the Will and the amendment, at this stage, will not cause any prejudice to the petitioners / defendants and the petitioners would have been given a chance to defend the case by filing additional written statement to avoid multiplicity of proceedings.

11. That apart, when the court below has rightly stated that the respondents /plaintiffs have not sought to delete the already existing averments in the plaint and initially the case of the petitioners was based on the adverse possession, the present petition is seeking to amend the plaint, as the petitioners acquired title based on the Will, cannot be found fault with.

In the result, the present Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssd

To

1.The learned District Munsif,
Ponneri.

2. The Section Officer,
V.R.Section,
High Court, Madras.

+1 cc to Mr.P.v.Murlidhar, Advocate Sr.No. 17800

+1 cc to Mr.V.Ajoy khose, Advocate Sr.No. 17064

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GSM(CO)
RMP(16/04/2021)