



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 18.01.2021

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THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

C.R.P (MD) No.151 of 2010

and

M.P (MD) No.1 of 2010

Nirmala Pius

...Petitioner/Petitioner/1st Defendant

Vs.

1.Jeela

2.Jayamery

3.Aandi Pendic

4.Maria Parimila Devi (Died)

5.Mahilana

6.Kezia Solomon

7.J.Kebha Joseph Xavier

... Respondents/Respondents/Plaintiffs

(RR6 and 7 are brought on record as LRs of deceased R4 Vide court order dated 31.07.2019 in C.M.P (MD) Nos.5679 to 5681 of 2019)

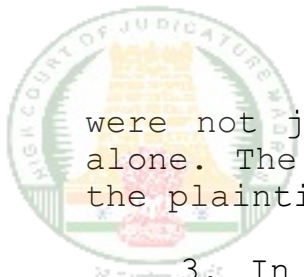
PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 10.11.2009 passed in I.A.No.82 of 2007 in O.S.No.16 of 2006 on the file of the Fast Track Court, Dindigul District.

For Petitioner : Mr.G.Gomathi Sankar
For R1 to R3 & R5 : Mr.K.Sekar

O R D E R

This revision is at the instance of the first defendant in O.S.No.16 of 2006. The said suit was filed by the plaintiffs therein seeking partition and separate possession of their 5/8th share in the suit property claiming that it belonged to their father who died interstate on 08.12.2002. The suit is being resisted by the petitioner contending that the father, namely, Xavier did not die interstate but he left a Will dated 01.12.2012 bequeathing the suit properties to his wife who is the 4th defendant in the suit. The 4th defendant, it appears has filed a suit for declaration of her title based on the said Will.

2. In the written statement filed by the defendants 1 and 4 in O.S.No.16 of 2006, it is specifically stated that Xavier had settled certain properties on the plaintiffs and therefore, the plaintiffs



were not justified in asking for partition of the suit properties alone. The execution of the settlement deed by Xavier in favour of the plaintiffs was categorically admitted in the written statement.

3. In the above said backdrop, the first defendant/petitioner herein came up with I.A.No.82 of 2007 seeking leave to amend the written statement to include certain properties claiming that they are also liable for partition. This attempt was resisted by the plaintiffs contending that the properties which are sought to be included in the suit are the properties which are the subject matter of the settlement deed executed by Xavier in favour of the plaintiffs. It was also contended that having admitted execution of the settlement deed in the original written statement filed, it is not open to the petitioner/first defendant to seek inclusion of the properties covered by the settlement deed(s) in the suit and make them liable for partition. It was also claimed that the petitioner was trying to withdraw the admission made.

4. I have heard Mr.Gomathi Sankar, learned counsel appearing for the petitioner and Mr.K.Sekar, learned counsel appearing for the respondents 1 to 3 and 5.

5. Mr.G. Gomathi Sankar, learned counsel appearing for the petitioner would vehemently contend that the trial court was not right in dismissing the application for amendment. Pointing out the fact that it is a pre-trial amendment, the learned counsel would submit that the court should be liberal in considering a pre-trial amendment. The law relating to amendment is well settled. All pre-trial amendments should be liberally considered, at the same time, a party cannot be allowed to withdraw the admission made by it so as to prejudice the other party.

6. In the written statement filed by the defendants 1 and 4 in the suit there is a specific and categoric admission to the effect that certain properties were settled on the plaintiffs by the common propositor namely Xavier. Having admitted the execution of the settlement deed in favour of the plaintiffs, the petitioner herein, who figures as the first defendant in the suit now wants to include the properties covered by the settlement deed(s) but without even attempting to introduce some pleading regarding the invalidity or otherwise of the settlement deed(s). If the amendment petition is allowed, it will very clearly affect the rights accrued to the plaintiffs by virtue of the admission made in the written statement.

7. The learned trial Judge had examined the issue in the right perspective and come to the conclusion that the amendment should not be allowed even though it is a pre-trial amendment as the same would result in withdrawal of an admission made in the original written statement apart from denuding the plaintiffs the advantage that they had gained by virtue of such admission in the pleadings.



8. I do not see any material irregularity or illegality in the order of the trial court to enable interference in this revision. The revision therefore fails and is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

CM

To:

1.The Fast Track Court,
Dindigul District.

2.The Section Officer(2 copies)
VR Section
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.K.SEKAR, Advocate (SR-1202[F] dated 19/01/2021)

+1 CC to Mr.G.GOMATHISANKAR, Advocate (SR-1275[F] dated 19/01/2021)

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VB (25.02.2021) 3P 6C