



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.02.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (MD) No.430 of 2020

and

CMP (MD) No.2549 of 2020

N.Nagarajan

... Petitioner

vs.

D.Kavitha

... Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 29.01.2020 made in I.A.No.666 of 2019 in O.S.No.109 of 2014 on the file of the Hon'ble Principal District Munsif Court, Madurai.

For Petitioner : Mr.Y.Krishnan

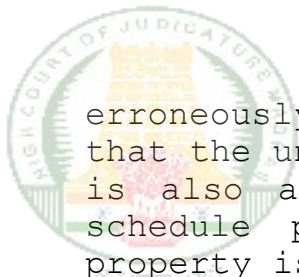
For Respondent : Mr.R.Devaraj

ORDER

The revision petition has been filed against the fair and decreetal order dated 29.01.2020 made in I.A.No.666 of 2019 in O.S.No.109 of 2014 on the file of the Principal District Munsif Court, Madurai.

2.The case of the petitioner/plaintiff is that the petitioner filed the above suit for permanent injunction restraining the respondent/defendant from interfering with the use and occupation of the suit property in respect of the share of the petitioner/plaintiff and to restrain the defendant from putting up any construction in the suit property which is a common property. The petitioner filed the above I.A for amendment of the plaint which was dismissed, against which, this revision petition has been filed.

3.The learned counsel for the petitioner would state that the petitioner has prayed for permanent injunction as per the recitals of the will where the petitioner was entitled to B schedule property and the petitioner's sister Mahalakshmi @ Kamala is entitled to C schedule property and D schedule property is described as a common property. According to the petitioner, due to old age, he



erroneously and inadvertently stated in paragraph 3 of the plaint that the undivided 1/3rd share of the D schedule property of the will is also allotted to the petitioner's brother Velu along with A schedule property and undivided 1/3rd share of the D schedule property is allotted to the petitioner's sister Mahalakshmi @ Kamala along with C schedule property and undivided 1/3rd share of the D schedule property is allotted to him along with B schedule property and therefore, he has sought to delete the words 'the undivided 1/3rd share in D schedule properties'. He would further state that the above facts are material to determine the controversy between the parties, but however, the Court below has erroneously dismissed the amendment petition. Thus, he would pray to set aside the impugned order.

4.The learned counsel for the respondent would state that the petitioner in his evidence has deposed that the petitioner and others are commonly enjoying the undivided 1/3rd share in D schedule property and it is also corroborated by the evidence of PW2. After taking a clear pleading and admitting the above said facts, the petitioner now wants to take a new stand as stated in the petition which is legally unsustainable. He would also state that the petitioner wants to introduce a new case in the verge of trial and such an amendment is not permissible in law and would state that the Court below has rightly dismissed the amendment petition and therefore, the interference of this Court is not necessary.

5.Heard the learned counsel for the petitioner as well as the respondent.

6.Perusal of record shows the Court below dismissed the amendment petition holding that the parties already let in their evidence and the suit is in the verge of disposal and therefore, allowing the proposed amendment at this stage will cause prejudice and unnecessary hardship to the respondent/defendant. Admittedly, the will has been filed along with the plaint. The will is not disputed and the recitals of the will is also not disputed. Since the suit is pending for so many years and considering that the parties are brother and sister, this Court is inclined to allow the amendment petition with the cost of Rs.2,000/- to the respondent. Accordingly, the fair and decreetal order dated 29.01.2020 made in I.A.No.666 of 2019 in O.S.No.109 of 2014 on the file of the Principal District Munsif Court, Madurai, is set aside and the amendment petition in I.A.No.666 of 2019 is allowed on payment of Rs.2,000/- to the respondent within a period of two weeks from the date of receipt of a copy of this order. However, taking into consideration the suit is pending from 2014 onwards, without adverting to the merits of the case, the learned Principal District Munsif, Madurai, is directed to dispose of the suit in O.S.No.109 of 2014 within a period of four months from the date of amendment.



7. With the above directions, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

// True Copy //

Sd/-

Assistant Registrar ()

/ /2021

Sub Assistant Registrar (CS)

bala/gns

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Principal District Munsif,
Madurai.

Copy to

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

+2 CC to Mr. Y. KRISHNAN, Advocate (SR-4436[F] dated 11/02/2021)

+1 CC to Mr. R. DEVARAJ, Advocate (SR-4798[F] dated 12/02/2021)

ORDER MADE IN
CRP (MD) No.430 of 2020
DATED : 11.02.2021

VB (16.03.2021) 3P 8C