



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.04.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P(MD).No.657 of 2021 and

C.M.P(MD).No.3564 of 2021

Karunanithi :Petitioner /9th respondent/9th defendant
Vs.

1. A.R. Muthukumar

Haritharaputhirapillai @ Ariyaputhirapillai (died)

:1st respondent/Petitioner/Plaintiff

Kalyani Ammal (died)

2.Ramamirtham

3.Dharmambal

4.Nithya Kalyani

5.Thaiyalnayagi

6.Hariharan

7.Ramalakshmi

: Respondents 2 to 7 /Defendants 3 to 8/Respondents 3 to 8

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 19.02.2021 in I.A.No. 142 of 2020 in O.S.No. 48 of 2009 on the file of the Subordinate Judge, Ramanathapuram.

For petitioner : Mr. C. Prabhu Rajadurai

ORDER

This revision is directed against the order dated 19.02.2021 passed in I.A.No. 142 of 2020 in O.S.No.48 of 2009, on the file of the Subordinate Court, Ramanathapuram, allowing the petition filed under Order 6 rule 17 C.P.C.,

2. The revision petitioner is the 9th defendant in the suit in O.S.No.48 of 2009 on the file of the Subordinate Court, Ramanathapuram.

3. It is not in dispute that the first respondent / plaintiff has filed a suit for claiming the reliefs to declare that three sale deeds dated 26.07.2008, 30.07.2009 and 30.07.2008 respectively are invalid and for partition claiming 1/3rd share in the suit properties. The defendants 8 and 9 are contesting the suit by filing their written statement. The other defendants remained ex parte.

4. After commencement of the trial, when the case was posted for cross examination of PW.1, the plaintiff has filed an application under Order 6 Rule 17 CPC to amend the plaint for altering the shares of the parties. The revision petitioner, who is the 9th defendant along with 8th defendant has raised their objections by filing their counter statement and the learned



Subordinate Judge, after conducting the enquiry, has passed the impugned order allowing the application on 19.02.2021 and thereby permitting the proposed amendments.

5. It is evident that the plaintiff has taken a stand in the plaint that the properties are ancestral properties and as the third defendant was given in marriage prior to the year 1982, the third defendant was not having any share in the suit properties.

6. The plaintiff, after commencement of the trial, invoking the Hindu Succession (Amendment) Act, 2005 and thereby, admitting the rights and shares of the third defendant, has filed the present application for amending the plaint with respect to the shares of the parties.

7. The trial Court, by holding that the proposed amendments will not change the nature of the suit, has permitted the amendments. Even if such amendment petition is not filed, the Court is duty bound to go in to the nature of the properties and to ascertain the shares of the parties.

8. No doubt, as rightly contended by the revision petitioner, the suit was filed in the year 2009 and the Hindu Succession (Amendment) Act came into force in the year 2005, but the plaintiff has come forward with the above petition only in the year 2020 and that too after commencement of trial. Except the above, the revision petitioner has not raised any other valid ground or legal objection to impugn the order.

9. As rightly contended by the trial Court, the proposed amendments are not in the nature of changing the nature and character of the suit and as such, the decision of the trial Court in allowing the amendments cannot be found fault with. But, at the same time, considering the delay and also the stage at which the above petition came to be filed, this Court is of the view that the plaintiff must be mulcted with the costs.

10. In the result, the Civil Revision Petition is partly allowed and the first respondent / plaintiff is directed to pay a sum of Rs.1,000/- (Rupees Thousand only) as costs to the revision petitioner on or before 30.04.2021, failing which, the petition in I.A.No. 142 of 2020 shall stand dismissed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CSIII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



To

The Subordinate Judge, Ramanathapuram.

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