



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON:16.02.2021

DELIVERED ON :15.07.2021

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (PD) (MD)No.767 of 2020

and

CMP (MD) .No.5121 of 2020

WEB COPY

1.P.K.Vanchimuthu  
2.V.V.Vijay Prabhakar  
3.Indira :Petitioners/Respondents 2-4/Defendants 2-4

Vs

1.Kannammal :1<sup>st</sup> Respondent/Petitioner/Plaintiff  
2. Thuckkaiammal (died)  
3.Ganesan :2<sup>nd</sup> Respondent/5<sup>th</sup> Respondent/2<sup>nd</sup> defendant  
4.K.Kamaraj :3<sup>rd</sup> Respondent/6<sup>th</sup> Respondent/6<sup>th</sup> defendant  
5.K.Chitra :4<sup>th</sup> Respondent/7<sup>th</sup> Respondent/7<sup>th</sup> defendant  
6.V.K.Mathivathani :5<sup>th</sup> Respondent/8<sup>th</sup> Respondent/ 8<sup>th</sup> defendant

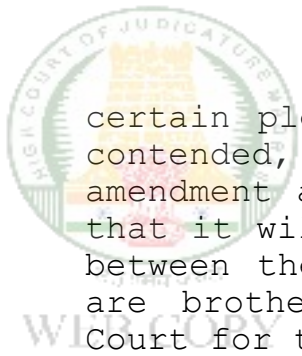
**PRAYER** : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order made in I.A.No.80 of 2019 in O.S.No.31 of 2016 dated 17.12.2019 on the file of (FTC) Additional District Court, Palani.

For Petitioner : Mr.M.Joseph Thatheus Jerome  
For R-1 : Mr.D.Venkatesh

### ORDER

This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order in I.A.No.80 of 2019 in O.S.No.31 of 2016 dated 17.12.2019 on the file of (FTC) Additional District Court, Palani.

2. The petitioners would aver among other things that the first respondent herein instituted a suit in O.S.No.31 of 2016 on the file of the Additional District Court (FTC) Palani for partition as against the other brothers therein as early as on 08.03.2016. Pending suit, the first respondent herein filed an application in I.A.No.80 of 2019 for amendment contending that the 5<sup>th</sup> defendant who is the second respondent herein is of unsound mind and therefore, she has to be appointed as guardian and she also wanted to add



certain pleadings in the pending suit filed by her. It is further contended, after full contest, the trial Court allowed the said amendment application vide its order dated 17.12.2019 by contending that it will not alter the nature and character of the suit pending between the parties. Aggrieved over the same, the petitioners, who are brothers of the first respondent/plaintiff, are before this Court for the relief stated earlier.

3. The learned counsel for the petitioner contends that if the prayer of the plaint is amended, the nature of the suit will entirely get changed. Further, the Court below cannot come to the correct conclusion with regard to the suit schedule property. In the case on hand, the first respondent failed to set out any reason in the affidavit as to why she moved the amendment application after filing of written statement, framing of issues and commencement of trial and examination and cross examination of plaintiffs. However, the Court below without appreciating all those facts, had allowed the order impugned in this Civil Revision Petition by contending that if the amendment petition is allowed, the nature and character of the suit will not be changed. The first respondent herein deliberately suppressed many material facts and documents and also the application was not a *bona fide* one. Hence, he prays for allowing this Civil Revision Petition.

4. *Per contra*, the learned counsel for the first respondent contends that the Court below after taking note of the vital point that the prayer of the petitioner to amend the plaint is allowed, the nature of the suit in any way will not be changed and accordingly allowed the prayer of the amendment application filed by her in which no infirmity or illegality can be found. Therefore, he prays for dismissal of this Civil Revision Petition.

4.1. He also relied on the following judgments to support his contentions:-

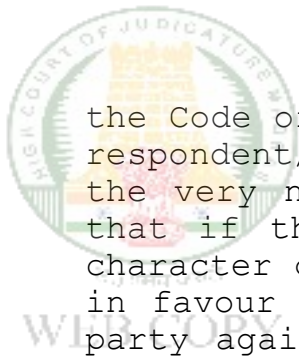
a) Pankaja & another Vs. Yellappa (D) Lrs & Others reported in 2004 (4) CTC 231.

b) Baldev Singh and Others Vs Manohar Singh & another in appeal (civil) No.3362 of 2006.

c) Surenderkumarsharma Vs. Makhan Singh reported in 2009 (10) SCC 626.

5. Heard the learned counsel for the petitioners and the learned counsel for the first respondent.

6. It is seen from the records that the prayer for amendment filed by the petitioners is a belated one and no solid reason is stated at the time of filing I.A.No.80 of 2018 made in O.S.No.31 of 2016. Moreover, after using the art of cross-examination, the first respondent has come up with a new plea along with amendment application. In the case of post-trial, this Court



the Code of Civil Procedure. Once the cross-examination is over, the respondent/s cannot deviate from its original suit. This will dilute the very nature of the suit. This Court is of the considered view that if the amendment application is allowed, the nature and the character of the suit will entirely get changed. The Court must bear in favour of doing full and complete justice in the case where the party against whom the amendment is to be allowed. In the case on hand, the trial started, written statement was also filed by the parties ; issues had been framed ; first respondent / plaintiff had examined herself as well as allowed herself to be cross examined and had also closed her evidence and the defendant had commenced his evidence and filing of proof affidavit and documents by the petitioners herein were over; The first respondent has not stated any valid reason for filing of amendment petition on 05.07.2019 that too after the commencement of trial. Without considering all these aspects, the Court below had passed a cryptic order.

6.1. Further, the first respondent, after the death of her father, filed O.S.No.31 of 2016 for partition on 08.03.2016, deliberately suppressing to mention GWOP No.115 of 2015 on the file of the District Court through which she claimed to be appointed as guardian to one of her brothers on the ground that he was mentally ill. The prayer in that G.W.O.P is also to appoint her as guardian to his brother, namely, Ganesan, who is the second respondent herein. But the fact remains that the said G.W.O.P.No.115 of 2015 is still pending whereas the very same prayer is allowed by the Court below without passing a speaking order. For the very same cause of action, the first respondent cannot maintain G.W.O.P as well as Original suit filed by her. Therefore, the order of the court below is liable to be set aside. It is open to the first respondent herein to work out her remedies pending G.W.O.P.No.115 of 2015 in the manner known to law. At this fag end of the trial in O.S.No.31 of 2016, the first respondent cannot maintain an amendment application by which the issue on hand will become back to square one.

7. For the foregoing reasons, this Civil Revision Petition stands allowed and the order of the Court below stands set aside. However, there will be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

The Additional District Judge,  
Fast Track Court  
Palani.

+1CC to M/s M. Joseph Thathuva Jerome, Advocate, SR. No. 22798 dated  
15.07.2021

C.R.P. (PD) (MD) No.767 of 2020  
15.07.2021

DKS (CO)  
LR (23.07.2021) 4P 3C