



C.R.P.Nos.1869 & 1870 of 2020
and C.M.P.Nos.11235 & 11236 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2022

CORAM :

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.Nos.1869 & 1870 of 2020

and

C.M.P.Nos.11235 & 11236 of 2020

C.R.P. No.1869 of 2020

Balasubramaniam

... Petitioner

Vs.

1.S. Radhai

2. V.S.Vimallan

3. Saraswathi

... Respondents

C.R.P. No.1870 of 2020

1. Saraswathi

2. Balasubramaniam

...Petitioners

vs.

1. S. Radhai

2. V.S. Vimalan

...Respondents

Prayer in C.R.P. No.1869 of 2020: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal



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orders passed in I.A. No.2 of 2019, in O.S. No.216 of 2017 dated 25.02.2020 on the file of the I Additional District Judge, Erode.

Prayer in C.R.P. No.1870 of 2020: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal orders passed in I.A. No.3 of 2019, in O.S. No.216 of 2017 dated 25.02.2020 on the file of the I Additional District Judge, Erode.

In CR.P. No.1870 of 2020

For Petitioners : Mr. K.S. Jeyaganeshan
For R1 & R2 : Mr. N. Manokaran

In CR.P. No.1870 of 2020

For Petitioner : Mr. K.S. Jeyaganeshan
For R1 & R2 : Mr. N. Manokaran

COMMON ORDERS

The revision petitioners are the defendants in O.S. No.217/17 on the file of the I Additional District Court, Erode. The respondents 1 & 2 originally filed the suit for partition of the suit properties and for directing the revision petitioners/defendants to pay a sum of Rs.20,000/- towards mesne profits.



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2. For the sake of convenience the parties are referred to as per their ranking in the trial court in the Original Suit and in appropriate places, their ranking in the present petition would be indicated.

3. The case of the plaintiffs in nutshell is as follows:

The 1st plaintiff S. Radhai is the mother of the 2nd plaintiff V.S.Vimallan and also daughter-in-law of the 1st defendant Saraswathi. The 2nd defendant Balasubramaniam is the son of the 1st defendant and brother of the 1st plaintiff's husband V.C. Selvaraj. V.C. Selvaraj died in a road accident on 11.03.2005 leaving behind his wife and son (plaintiffs) as his legal heirs. The suit properties are the ancestral properties of the husband of the 1st plaintiff and his brother C.Balasubramaniam and that after the death of the 1st plaintiff's husband his legal heirs namely, the plaintiffs are entitled to 4/9 shares in the suit properties.

3.1. The revision petitioners/defendants filed a written statement contending that Chinnanan, father of the husband of the 1st plaintiff and



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the 2nd defendant inherited items 1 to 11 of the suit property through a registered Will dated 17.01.2002 executed by their father Athappa Gounder, and purchased 12th item of the suit property from out of his own income as he was working as an engineer in PWD. According to the defendants, the properties jointly owned by Chinnanan and his brother Sengoda Gounder were orally partitioned during the year 1968. A registered written partition deed was also executed on 11.11.2009 between Chinnanan and the legal heirs of his senior paternal uncle Sengodan. Thus, according to the defendants there are no joint family properties for partition as all the suit properties are the exclusive and separate properties of Chinnanan.

4. The trial court framed necessary issues and both the parties went for trial during which time the 2nd defendant filed an application in I.A. No.2/2019 under Order XVI Rule 6 & Section 151 CPC to issue summons to the Branch Manager, Indian Bank, Perundurai road Branch, Erode, for producing the original Will dated 17.01.2002 which was



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deposited as a security by him for the loan obtained by him (the 2nd defendant). The said petition was dismissed by the learned I Additional District Judge, Erode, on 25.02.2020 on the ground that after the closure of plaintiffs' evidence and after D.W1 was examined in full, the 2nd defendant cannot seek for production of Will and that too from a Bank where he has deposited it as a security for the loan obtained by him. Moreover there is no pleading in the written statement in this regard. If at all, the 2nd defendant wants to mark the Will, he has to clear the loan and get the Will from the bank. Aggrieved over this order, the 2nd defendant filed CRP No.1869/2020.

5. The plaintiffs filed an application in I.A. No.3/19 under Order VI Rule 17 CPC & Section 151 CPC praying to amend the plaint. The said petition was allowed by the learned I Additional District Judge, Erode, on 25.02.2020 on the ground that delay in filing the petition alone cannot be a criterion for dismissing the petition. Moreover, there are averments in the plaint with regard to the Will and settlement deeds and no



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new case is being projected by the plaintiffs. Aggrieved over this order also the 2nd defendant filed CRP No.1870/2020.

6. Heard Mr. K.S. Jeyaganeshan, learned counsel for the revision petitioners and Mr. N. Manokaran, learned counsel for the respondents 1 and 2.

7. Mr.K.S. Jeyaganeshan, learned counsel for the revision petitioner would contend that I.A. No.2/19 was filed only for production of the Will dated 17.01.2002, executed by Athappa Gounder in favour of Chinnanan, by the Manager of Indian Bank, Erode, since it is incumbent on them to prove the same. In such circumstances, the trial court ought to have allowed the said application. He would further contend that the plaintiffs cannot file an application Under VI Rule 17 CPC praying to amend the plaint at the fag end of trial and in fact they are bringing in new facts to the case. It is further contended by him that though the plaintiffs knew the existence of the Will dated 17.01.2002 and the two subsequent settlement deeds (both dated 14.03.2006) at the time of filing of the suit in



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the year 2017 they did not seek for setting aside the same as null and void. Only in the year 2019 they had filed the present petition for inclusion of the prayer for declaration of the aforesaid documents as null and void. Such an amendment, according to the counsel for the revision petitioners, would result in gross failure of justice and is also hopelessly barred by limitation.

8. Per contra, Mr. N. Manokaran, learned counsel for the respondents would contend that the revision petitioners without clearing the loan amount cannot summon the original Will from the bank and that as rightly held by the trial court judge, there is no pleading in the written statement about this. It is further contended by him the prayer for cancellation of Will and settlement deeds are filed within two years from the date of knowledge and therefore the amendment sought for by the plaintiffs is not barred by limitation.

9. At the outset it may be observed that the plaintiffs filed the



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suit for partition of the suit properties claiming that they were ancestral properties. In the written statement the defendants had contended that the suit properties are not ancestral in nature and that a Will dated 17.01.2002 was executed by Attappa Gounder in favour his son Chinnanan, the father of the 2nd defendant. Now the plaintiffs want to declare that the Will dated 17.01.2002 and the subsequent settlement deeds dated 14.03.2006 executed by Chinnanan in favour of the defendants 1 and 2 as null and void. It is true that the petition for amendment under Order VI Rule 17 CPC is filed after the examination of D.W.1. Order VI Rule 17 CPC reads thus:

"17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties : Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised



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10. However it is settled law that rules or procedure is a handmaid of justice. It is also settled that the court must be extremely liberal in allowing the prayer for amendment, if the court is of the view that if such amendment is not allowed, the party who has prayed for such an amendment shall suffer irreparable loss and injury. In the instant case, even the plaintiffs had contended that they came to know about the existence of a Will very recently. The suit was filed by the plaintiffs for partition of the suit properties in the year 2017 and the application for amendment was filed in the year 2019. Further, the period of limitation is a mixed question of law and fact and only after full fledged trial the same can be adjudicated upon. The issue involved in the present case is whether the suit properties are ancestral in nature as alleged by the plaintiffs or they are the exclusive properties of Chinnan, father of the husband of the 1st plaintiff and the 2nd defendant, who inherited the same through a registered Will dated 17.01.2002 executed by his father Athappa Gounder in his favour and who subsequently executed two settlement deeds dated



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14.03.2006 in favour of the defendants 1 & 2. In the circumstances, the prayer for amendment sought for by the plaintiffs has to be allowed and the trial court has in fact exercised its jurisdiction rightly which does not warrant any interference by the court. Moreover, the amendment sought for now does not constitute a new cause of action or raise a different case, but amounts to more than a different or additional approach to the same facts and the amendment is also necessary to avoid multiplicity of proceedings between the parties.

11. As far as issuing summons to the Branch Manager, Indian Bank, Perundurai road Branch, Erode, is concerned, it is to be seen that the 2nd defendant has to prove the Will in the manner known to law and for the said purpose the original Will is required. Since it is contended by the 2nd defendant/revision petitioner that the Will is deposited in the Bank as security for the loan obtained by him, the same has to be produced before the trial Court. Hence, the trial court is directed to issue summons to the Branch Manager, Indian Bank, Perundurai road Branch, Erode, for producing the original Will dated 17.01.2002, which was deposited as a



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security by the 2nd defendant. The trial court, on production of the original Will by the bank, shall take photostat copies in the presence of the plaintiffs' counsel and compare with the original and certify the same. Thereafter the copy of the Will can be marked. The original Will shall be returned to the Manager on the same day without any delay. With the above observations C.R.P. No.1869/2020 is allowed and C.R.P. No.1870/2020 is dismissed.

12. In the result,

- i. C.R.P. No.1869/2020 is allowed. No costs. Consequently connected miscellaneous petition is closed.
- ii. the fair and decreetal orders passed in I.A. No.2 of 2019, in O.S. No.216 of 2017 dated 25.02.2020 on the file of the I Additional District Court, Erode, is set aside.
- iii. C.R.P. No.1870/2020 is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.
- iv. the fair and decreetal orders passed in I.A. No.3 of 2019, in O.S.



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WEB COPY No.216 of 2017 dated 25.02.2020 on the file of the I Additional

District Court, Erode, is upheld.

15.11.2022

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

R. HEMALATHA, J.
bga

To,
The I Additional District Judge, Erode.

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