



WEB COPY

C.R.P(PD).No.2599 of 2014



IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	31.01.2022
<i>Pronounced on</i>	16.02.2022

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Civil Revision Petition (PD) No.2599 of 2014

1. Polly Robert
2. Baby Joseph
3. Anne Joseph
4. Elizabeth ... Petitioners

Vs.

1. Paul
2. Joby
3. Tessy
4. Biju Joseph
5. Lissy Chakkuny ... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decree made in I.A.No.22 of 2014 in I.A.No.82 of 2008 in O.S.No.27 of 1996 on the file of the District Munsif Court cum Judicial Magistrate at Valparai.



WEB COPY

C.R.P(PD).No.2599 of 2014



For Petitioners : M/s.Sathiyamoorthy
for M/s.S.Sithirai Anandan

For Respondents 1-2 : M/s.P.S.Kothandaraman
B.Sathiya

For Respondents 3-4 : No Appearance

For Respondent 5 : No Appearance

ORDER

The Civil Revision Petition No.2599 of 2014 is filed challenging the order and decree passed in I.A.No.22 of 2014 in I.A.No.82 of 2008 in O.S.No.27 of 1996 dated 02.07.2014 on the file of the District Munsif Court cum Judicial Magistrate at Valparai.

2. The petitioners herein are the defendants 3 to 5 and 7 in I.A.No.82 of 2008 in O.S.No.27 of 1996.

3. The I.A.No.22 of 2014 is filed by the defendants 1 and 2 who is the respondents 1 and 2 herein under Section 151 of the Code of Civil Procedure, 1908 to permit them to file additional counter affidavit in I.A.No.82



of 2008 (final decree application) in O.S.No.27 of 1996. The said application was allowed on 02.07.2014 by the District Munsif cum Judicial Magistrate, Valparai.

4. The preliminary decree in O.S.No.27 of 1996 was passed on 19.03.1997. Aggrieved over the same the respondents 1 and 2 filed an Appeal Suit A.S.No.74 of 2001 before the learned Sub-ordinate Judge, Pollachi and the same was dismissed by the learned Judge on 26.07.2002 on the ground that The Indian Succession (Kerala Amendment) Act, 1986, Act I 1997 is not applicable to the present case since, the suit schedule property is situated at Valparai, Coimbatore District, Tamil Nadu.

5. While, the above A.S.No.74 of 2001 was pending, the Central Government brought two amendments to the Indian Succession Act, 1925 with effect from 27.05.2002. The I.A.No.82 of 2008 in O.S.No.27 of 1996 is an application for final decree and the preliminary decree in O.S.No.27 of 1996



was passed on 19.03.1997. The respondents 1 and 2 have filed the I.A.No.22 of 2014 dated 25.06.2014 seeking permission to permit the respondents 1 and 2 herein to file an additional counter affidavit in I.A.No.82 of 2008 which is the final decree application. The above I.A.No.22 of 2014 has been filed after a lapse of six years from the date of filing the final decree application in the year 2008.

6. This Court in C.R.P(PD)No.1508 of 2014 by an order dated 16.04.2014 directed the District Munsif Court, Valparai to dispose of the case in final decree application filed in I.A.No.82 of 2008 in O.S.No.27 of 1996 on or before 30.06.2014 after giving fair opportunity to both sides.

7. Learned counsel for the petitioners contended that the application in I.A.No.22 of 2014 is filed after a lapse of six years for filing additional counter affidavit. The preliminary decree was passed on 19.03.1997 and the same was also confirmed by the Appellate Court in A.S.No.74 of 2001 vide judgment



dated 26.07.2002. The second appeal was also preferred against the judgment in A.S.No.74 of 2001 before this Court along with the petition M.P.No.1 of 2009 in S.A.SR.No.81826 of 2009 to condone the delay of 2536 days and the same was dismissed on 03.12.2009. The preliminary decree dated 19.03.1997 passed in O.S.No.27 of 1996 has reached finality. At this juncture, the respondents 1 and 2 herein cannot file the present application in I.A.No.22 of 2014 seeking to file additional counter in I.A.No.82 of 2008, which is only to reopen the preliminary decree that has already been confirmed by the first appellate Court and attained finality. The respondents 1 and 2 herein have not explained the reason why the permission was not sought to file the additional counter affidavit before filing the other applications in the final decree application.

8. Learned counsel appearing for the petitioners further contended that the plea raised in the additional counter affidavit has been already rejected by the Appellate Courts. Hence, there is no necessity to raise the same plea, and it is only an attempt by the respondents 1 and 2 to protract the disposal of the pending final decree application. In the application for final decree,



respondents 1 and 2 have filed their counter affidavits and their arguments were also heard by the Trial Court. The respondents 1 and 2 have simply stated that subsequent events have taken place after filing the counter in the final decree application and that is the reason, they seek to file the additional counter in the final decree application. The order of the Trial Court is contrary to the directions of this Court made in C.R.P.No.5082 of 2014.

9.Learned counsel for the respondents 1 and 2 submitted that the main contention raised in the application I.A.No.22 of 2014 is that the present amendment made in the Indian Succession Act is in support of their stand. The above said amendment came into force on 27.05.2002 and the judgment in A.S.No.74 of 2001 was passed on 26.07.2002 which is two months later of the amendment. He further contended that as per will the respondents 1 and 2 have paid a sum of Rs.25,000/- each to the defendants 3 to 5 and 7 within the stipulated period as per the will. Since, the first revision petitioner namely Polly Robert was not in station, the said amount has been sent to her on 26.07.2001 by RPAD and the same has been returned as refused. Hence, it is deemed to be served on her. Once, the payment is received by the defendants



3 to 5 and 7 and the first revision petitioner, their right over the schedule property becomes extinguished, and do not have any right over any other moveable or immovable properties.

10. On perusal of the materials available on record, it is an admitted fact that the application has been filed after a lapse of six years from the date of final decree application I.A.No.82 of 2008. The respondents 1 and 2 cannot be allowed to reopen the preliminary decree by way of filing the application I.A.No.22 of 2014 to file an additional counter affidavit in the final decree application. It is no doubt that the intention of the respondents 1 and 2 is to protract the proceedings which is pending before the Trial Court and it is also contrary to the order passed by this Court in C.R.P(PD)No.1508 of 2014 dated 16.04.2014 in which there is specific direction to the Trial Court to dispose of the final decree application I.A.No.82 of 2008 on or before 30.06.2014 after giving fair opportunity to both sides.



11. This Court do not appreciate the attitude, conduct and it is a delaying tactics adopted by the respondents 1 and 2, the Trial Court despite holding that the plea raised by the petitioners in the application I.A.No.22 of 2014 was already rejected by the Appellate Courts ought not to have allowed the said application enabling the respondents 1 and 2 to file an additional counter affidavit in the final decree application in I.A.No.82 of 2008. Moreover, the reasons given by the Trial Court for allowing the application is only to give fair opportunity to the petitioners to file the additional counter is in the interest of justice and entertaining the same would not cause prejudice to the parties in the final decree application is not acceptable/sustainable.

12. Moreover, in a final decree application what was decided in the preliminary decree passed in the case has to be followed and nothing else. The petitioner cannot file a additional counter affidavit in the final decree proceedings, in order to alter the preliminary decree, which has already reached finality. Further, there is an order of this Court passed in C.R.(PD)No.1508 of 2014, dated 16.04.2014 and the petitioner having failed to comply with the order of this Hon'ble Court, this application for filing



additional counter affidavit cannot be accepted and it is open to the petitioners to approach the appropriate Court for alteration or modification of the preliminary decree based on the subsequent amendments. In such circumstances, the application for additional counter affidavit is not maintainable in law.

13. Considering the facts and circumstances of the case, the order and decretal order passed in I.A.No.22 of 2014 in I.A.No.82 of 2008 in O.S.No.27 of 1996 dated 02.07.2014 by the learned District Munsif Court cum Judicial Magistrate at Valparai is liable to be set aside and the same is set aside. In the result, this Civil Revision Petition stands allowed. No costs.

16.02.2022

vm

Index : Yes/No
Speaking Order/Non-Speaking Order



WEB COPY

C.R.P(PD).No.2599 of 2014



J.SATHYA NARAYANA PRASAD,J.

vm

To:

The District Munsif Court
Cum Judicial Magistrate,
Valparai,
Coimbatore.

Pre Delivery Order in
C.R.P(PD)No.2599 of 2014

16.02.2022