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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 21ST DAY OF FEBRUARY 2022

THE HON'BLE MR. JUSTICE N.SESHASAYEE

A.No.7187, 7188, 7189 & 7190 of 2019

in

C.S.No.476 of 2008

C.S.No.476 of 2008:-

Mrs.P.Ponni

W/o. Pannaga Sayanan

No.8, Old No.13, Ilaya Alwar Koil Street,

West Saidapet, Chennai 600 015.

...Plaintiff

-Vs.-

1. Mrs.S.Nirmala

W/o. Late C.Sathyanarayanan

2. Miss.S.Sangeetha

D/o. Late C.Sathyanarayanan

3. Miss.S.Sujatha

D/o. Late C.Sathyanarayanan

4. Miss.S.Indra Priyadharshini

D/o. Late C.Sathyanarayanan

All are residing at No.19-A

Rangabashyam Chetty Street

Saidapet, Chennai 600 015.

5. Mrs.Banu Raj W/o. Durairaj

Now Residing at No.8, Old No.13

Ilaya Alwar Koil Street,

West Saidapet, Chennai-600 015.



(*) 6. Shyamalavalli
W/o. Late Sathyanarayan
8/1, Elaiya Alwar Koil Street,
Saidapet, Chennai 15.

(*) 7. J.Sriram
S/o. Late Jaganatha Reddiar
Flat No.C 3, No.7 Ashok Tejaswi 4th Cross Street,
R.A.Puram, Madras 600 028.

(*) 8. J.Kumar S/o. Late Jagannatha Reddiar
No.4/27, Kambar Street, Alandur,
Madras 600 016.

(*) 9. Tmt.J.Padmavathi
D/o. Late Jagannatha Reddiar
5/3, Vembuli Amman Koil Street,
Alandur, Madras 600 016.

(*) 10. Tmt.J.Devatha
D/o. Late Jaganatha Reddiar
No.337, 4th Main Road, 18th Cross,
Upperpalace, Orchards
Sadasiva Nagar, Bangalore 560080.

(*) 11. P.Saraswathi Ammal
W/o. M.A.Kanniah Reddiar
21, Venu Reddy Street,
Guindy, Chennai 600 032.

...Defendants

(*) Defendants 6 to 11 are impleaded
as parties to suit as per order
dated 20.06.2012 made in A.No.1872/12.)

A.No.7187, 7188, 7189 & 7190 of 2019:-

1.S.Nirmala
W/o. Late C.Sathyanarayanan

2.Sangeetha
D/o. Late C.Sathyanarayanan

3.S.Sujatha



D/o. Late C.Sathyanarayanan

4.Indira Priyadarshani

D/o. Late C.Sathyanarayanan

All are residing at No.19-A
Rangabashyam Chetty Street
Saidapet, Chennai 600 015.

...Applicants in all the
Applications

Vs

1.P.Ponni

W/o. Pannaga Sayanan

New No.8/1, Elaiyalwar Koil Street,
West Saidapet, Chennai 600 015.

2.Mrs.Banu Raj

W/o. Durairaj

Now Residing at No.8, Old No.13
Elaiyalwar Koil Street,
Saidapet, Chennai-600 015.

3.J.Sriram

S/o. Late Jaganatha Reddiar

Flat No.C 3, No.7 Ashok Tejaswi 4th Cross Street,
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7.P.Saraswathi Ammal
W/o. M.A.Kanniah Reddiar
21, Venu Reddy Street,
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... Respondents in all the
Applications

A.No.7187 of 2019:-

Application praying that this Hon'ble Court be pleased to Re-call
DW-1 to lead further evidence in C.S.NO.476 of 2008.

A.No.7188 of 2019:-

Application praying that this Hon'ble Court be pleased to Re-open the
Evidence of Nirmala DW1 in C.S.No.476 of 2008.

A.No.7189 of 2019:-

Application praying that this Hon'ble Court be pleased to receive the
additional documents on behalf of the defendants 1-4 as listed out in the
judges summons, receive and admit the same in evidence on behalf of the
defendants 1-4.

A.No.7190 of 2019:-

Application praying that this Hon'ble Court be pleased to permit the
defendants 1 to 4 file a supplemental additional Written Statement on behalf
of the defendants 1-4 in the above suit in C.S.No.476 of 2008 and receive



These Applications coming on this day before this court for hearing,
the court made the following order:-

1. The defendants 1 to 4 in C.S.476 of 2008 have come forward with four applications: (a) A.No:7187 of 2019 to recall D.W.1; (b) A.No.7188 of 2019 to re-open the evidence of DW1; (c) A.No.7189 of 2019 for receive as many as 40 additional documents; and (d) A.No.7190 of 2019 to permit the defendants 1 to 4 to file an additional written statement.

The backdrop:

2.1 The aforesaid four applications are set in the following context:

- The dispute is over the estate of a certain Pattabhirama Reddiar. Pattabhirama Reddiar had a son Chakrapani and two daughters, Saraswathi and Lakshmitakantan.
- Chakarapani was married to Shyamalavalli and they had a son Sathyanarayanan and two daughters, Ponni and Banu. Sathyanarayanan was married to Nirmala and they have three daughters.
- In all three suits have come to be filed of which, two are for partition and one is for dissolution of a partnership firm. The details are as below:

<i>Case No.</i>	<i>Plaintiff</i>	<i>Major Relief</i>
C.S.252 /	Saraswathi	Claiming partition on the



<i>Case No.</i>	<i>Plaintiff</i>	<i>Major Relief</i>
1996	(Daughter of Pattabhirama Reddiar)	ground that the assets of Pattabhiraman are ancestral properties.
C.S.476/2008	Ponni (Grand daughter of Pattabhirama Reddiar)	For partition
C.S.949/2004	Shyamalavalli (Daughter-in-law of Pattabhirama Reddiar)	For dissolution of the partnership firm

- C.S.No.476 of 2008 was laid by Ponni against the widow of her brother Sathyanarayanan, the first defendant herein and his three daughters, who are arrayed as defendants 2 to 4 and a certain Banu Raj, her own sister as the fifth defendant. She had impleaded her mother Shyamalavalli as the sixth defendant and there are other defendants, which include Saraswathi, who is the plaintiff in C.S.No.252 of 1996.

2.2 The narrative goes this way: Pattabhirama Reddiar was alleged to have executed a Will dated 05.03.1982. This was sought to be probated in T.O.S.No.1 of 2004 by Sathyanarayanan. After the trial, and on 11.02.2021 this proceedings came to be dismissed by this Court. Be that as it may, on the strength of this Will, Shyamalavalli, the daughter-in-law of Pattabhirama Reddiar had executed a settlement deed dated 27.07.2004 in



plaintiff and the fifth defendant in C.S.No.476 of 2008. The suit came to be resisted by the widow and children of Sathyanarayanan, essentially on the strength of the Will dated 05.03.1982, which the Court has declined to probate.

2.3 Now these defendants contend that they have discovered a new Will dated 22.10.1982 executed by Pattabhirama Reddiar, and also a Memorandum of family arrangement. This is now sought to be introduced by way of an additional written statement, for receiving which A.7190 of 2019 is filed.

3. Mr.R.Thiagarajan, learned counsel appearing for the defendants 1 to 4 in C.S.No.476 of 2008 argued that the documents that these defendants now seek to introduce Vide A.No.7189 of 2019 are those that are necessary to prove the facts raised in the additional written statement. Placing reliance on the ratio in *Olympic Industries Vs Mulla Hussainy Bhai Mulla Akberally & Others* [(2009) 15 SCC 528], *Sushil Kumar Jain Vs Manoj Kumar & another* [(2009) 14 SCC 38], *Usha Balashaheb Swami & Others Vs Kiran Appaso Swami & Others* [(2007) 5 SCC 602], *Baldev Singh & Others Vs Manohar Singh & another* [(2000) 6 SCC 498] and <https://hcservices.ecourts.gov.in/hcservices/> *B.K.Narayana Pillai Vs Parameswaran Pillai & another* [(2000) 1 SCC



712], he argued that power of the Court to allow amendment of pleadings is wide, and that it can be exercised at any stage of the proceedings if it serves the cause of justice, and in this branch of procedural law, Court should be extremely liberal. In the instant case, the defendants 1 to 4 seek to file an additional written statement based on a discovery of a new Will dated 22.10.1982, which was hitherto unknown even to these defendants, and allowing it only ensure respect to the procedural objective of minimising the litigation. What if the newly found Will was found to be genuine? Will it not throw open the entire litigation for another round of inevitable litigation, queried the counsel. The fact now sought to be introduced is not in derogation of the earlier pleadings, but a new fact which only may render the earlier pleading of these defendants basing their defence on the basis of a Will, dated 05-03-1982 otiose. And T.O.S.No.1 of 2004 was withdrawn, not because there was no merit in it, but because a new Will dated, 22.10.1982 as discovered supercedes the earlier Will.

4. Mr.K.V.Ananthakrushnan, the learned counsel appearing for the plaintiff argued that the trial of the case has completed, and these defendants now attempt to alter the complexion of the case. He added that the discovery of an alleged new Will dated 22.10.1982, is an invention, and is aimed to

defeat the interest of the plaintiff and those who are similarly placed in this



batch of litigations, which needless to mention are waiting for justice for close to 14 years. And, no proceedings to probate this new Will has not even commenced. The game plan of the defendants 1 to 4 is clear: Invent a Will, stall the present batch of suits, and direct all those who might oppose the Will to another round in a testamentary litigation, and in the process enjoy the property. Secondly, recalling a witness for further examination under Order XVIII Rule 17 cannot be allowed routinely, and the Court ought not to ignore the setting in which the prayer is made. He relied on the ratio in *Ram Rati Vs Mange Ram (dead) through LRs* [(2016) 11 SCC 296], *Bagai Constructions Vs Gupta Building Material Store* [(2013) 14 SCC 1], *K.K.Velusamy Vs N. Palanisamy* [(2011) 11 SCC 275], *Vadiraj Nagappa Vernekar (dead) through Lrs Vs Sharadchandra Prabhakar Gogate* [(2009) 4 SCC 410], *M.M. Amonkar & others Vs S.A.Johari* [(1984) 2 SCC 354], *Rajeswari Vs Govindaraj* [(2015) 2 MWN (civil) 253], *S.V. Matha Prasad Vs Renuka Devi* [(2014) 6 CTC 670], *Steelage Industries Ltd., & another Vs Chander Bagai* [AIR 1992 Bombay 406].

5. Separate petitions are filed by defendants 1 to 4 with a prayer for filing additional written statement, to recall D.W.1 and to ensure they happen, an enabling prayer for re-opening the case have been filed. A decision on this primarily involves how well the Court negotiates its discretionary power



within the scheme of procedure law and its intent.

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6. A preliminary statement has to be made: In all cases where the Code grants discretionary power to the Court, its exercise is guided by the case before it – its merit and need for exercising it, and not by the case law placed before it. Case law chiefly lays down the principle but its application is regulated by the merit of the cause before the Court. The Code leaves ample space granting discretion to the court and this lends flexibility to the procedure. This is the beauty of the procedural law. Its object is to manoeuvre the judicial process through a treacherous terrain to justice, and not to derail the journey towards it. The principles laid down by the judicial pronouncements both of the Hon'ble Supreme Court and this Court is well known and they only provide certain guidance and clues. But in applying what are so stated, this court needs to focus on the merit of what the defendants 1 to 4 now contend.

7.1 Turning to the specifics of this case, this Court is least inclined to allow these applications. There may be merit in the plea taken in the additional written statement in which defendants 1 to 4 / the applicants herein have set up a new Will of Pattabhirama Reddiar dated 22.10.1982. But its genuineness is yet to be tested before this Court. The defendants are



optimistic about its genuineness, but mere optimism of one of the parties is not adequate for the Court to decide on their prayer which they seek after the closure of a painstaking trial in a batch of cases pending for over 14 years. The defendants 1 to 4 may ask a question that if after a round of testamentary litigation they succeed, will it not upset any decree that may be passed in this batch of litigation? The counter question, the Court now requires to address them is that what if they lose in the proposed testamentary litigation. Will it not then delay or deny the other parties to this batch of litigations endlessly to enjoy their rights to their share in the property? Therefore, howsoever tantalising the submissions of the counsel for the defendants 1 to 4 may be, yet caution cannot be thrown to wind merely because procedure grants the Court free space for exercise its discretionary power in receiving additional pleadings. As the case now stands, the proposed additional pleading of the defendants may well upset the present complexion of the case. The exercise of discretionary power should aim to enthrone the justice, and the Court should be extra careful in exercising it if it has the potential to convert Court into casinos. In this case, this Court does sense there is a substantial probability that the present attempt of the defendants 1 to 4 might convert the whole exercise into a gamble in a casino.



8. This batch of cases shall go to meets its logical end, and at this belated hour this Court cannot permit anything that impedes the Court. If however, the defendants succeeds in proving the genuineness of the Will dated 22.10.1982, then may be upset any decree that may be passed in the suit. But that has to be worked out in any independent proceedings and it cannot be allowed now. And, this situation is after all the creation of the defendants 1 to 4 themselves, but administration of justice guided by procedural law shall concern itself with justice for both, and not justice for one at the expense of the other.

9. In conclusion, this Court does not find any merit in any of the applications, and therefore A.Nos.7187, 7188, 7189 & 7190 of 2019 are dismissed.

Sd./-NSSJ.

21/02/2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

EVK 07/03/2022