



CRP (PD) No. 3089 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

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And

C.M.P.No. 21730 of 2021

K.P.Sri Sivam

... 1st respondent / 1st Defendant/Petitioner

Vs

1. K.C.Sivan

... Petitioner/Plaintiff/1st Respondent

2. Maadhu

3. Rajkumar

4. Muthu Selvam

5. Kannamani

6. S.Indhira Sri Sivam

7. L.Sakthivel

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8. K.Perumal

9. S.Maithili

10. M.Suresh

11. N.Anandhan

12. S.Vathsala Devi

13. G.Lakshmanan

14. D.Sivalingam

15. T.Dharmalingam

16. S. Ramasamy

17. L.Govindhasamy

18. K.Narasimman

19. G.Kaveri



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20. M.Madeshwaran

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21. M.Krishnammal

22. R.Nagaraj

23. K.Sundharam

24. S.Vijaya

25. A.Kumar

26. K.Mohan

27. P.Rathinam

28. T.Jaya

29. C.Kumar

30. R.Dhanabakkiyam

31. K.Saravanan



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32. K.Radha

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33. V.Palanivelu

34. G.Ranjitham ... Respondents 2 to 34/Defendants 2 to 34/
Respondents 2 to 34

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order of the District Munsif Court at Palacode, dated 09.04.2021 in I.A.No. 221 of 2019 in O.S.No. 47 of 2009.

For Petitioner : Mr. P.Valliappan
for M/s. PV. Law Associates

ORDER

Challenge in this revision is to the order of the trial Court allowing an amendment of the plaint sought for by the plaintiff to incorporate certain better details regarding the Will which is relied upon by him to establish his title to the property.

2. The plaintiff sued for declaration of his title and injunction claiming that the suit properties originally belonged to his maternal grandfather Attan @ Marikoundar.



3. According to the plaintiff, the said Attan @ Marikoundar had executed a registered Will dated 23.03.1973 bequeathing the property to be enjoyed by his grandmother for life and thereafter to be taken by the plaintiff absolutely. It is also the further claim of the plaintiff that his grandmother had put the plaintiff in possession in the year 1983. The plaintiff had further contended that in as much as the grandmother attempted to alienate the property and disturb his possession, he has filed a suit in O.S.No. 47 of 2009 before the District Munsif Court, Palacode and obtained a decree for injunction. The attempt made by the defendants to have the decree set aside also failed.

4. In the original plaint, the date of the Will was given as 23.03.1973 in one place and as 22.03.1973 in another place in paragraph No.5. In paragraph No.7, again the date of the Will was mentioned as 22.03.1973. After the trial had commenced and PW-1 was in the box, the plaintiff came up with the instant application seeking amendment to introduce paragraph No. 6(a) and to include the sentence at the end at paragraph No.4 stating that the Will was executed on 22.03.1973 and



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registered office of the Sub Registrar on 24.03.1973 as document No. 9 of 1973.

5. This prayer for amendment was resisted by the defendants contending that the amendment is belated and it is made after commencement of trial. It was also contended that it projects a new case.

6. The learned trial Judge upon consideration of the reasons assigned for seeking an amendment and the effect of the amendment concluded that the amendment does not alter nature of cause of action of the suit. No new facts are sought to introduced. The plaintiff only seeks to explain what he has already pleaded in a better manner. The learned Trial judge also found that the requirements of the proviso were also satisfied by the plaintiff. On the said findings, the learned Trial Judge allowed the application for amendment.

7. Mr. P.Valliappan, learned counsel appearing for the petitioner would strenuously contend that this is the third amendment that has been



sought for from the initiation of the suit. He would add that there are certain contradictions in the pleadings that are now sought to be introduced by way of amendment and the original pleadings that are already in place. He would point out that the amendment is a post trial amendment.

8. I have considered the submissions of the learned counsel appearing for the petitioner. I am unable to countenance his submissions.

9. A reading of the un amended plaint and the portion that is sought to be introduced by way of amendment clearly shows that the amendment sought for is only to explain the case of the plaintiff more lucidly. No new facts are introduced. The fact that the Will was executed on 22.03.1973 is reaffirmed and only the fact that it was registered on 24.03.1973 is sought to be introduced. That is not going to alter the case of the plaintiff or the defendants. As regards possession also, the plaintiff has stood by his plea that he was put in possession in the year 1983 and a suit in O.S.No. 306 of 1995 was decreed. Now here seeks to introduce the old suit number, namely, O.S.No. 638 of 1993 which was filed by him before the



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Dharmapuri District Munsif which was transferred to Palacode. Therefore, I do not see any legality in the order allowing the amendment. The amendment which seeks to explain the pleadings has to be allowed in order to put the Court in better position to consider the rival claims of the parties. The learned Trial Judge has adverted to the proviso to Order 6 Rule 17, held that the plaintiff has satisfied the requirements of the proviso also. I do not see any reason to interfere with the order of the trial Court granting the amendment. Hence, this Civil Revision fails and it is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. It is needless to point out that the petitioner/defendants will have to file the written statement.

11.01.2022

vsg
Index: Yes/No
Speaking order / Non speaking order

To:

1. District Munsif Court, Palacode.
2. The Section Officer,
VR Section,
Madras High Court, Chennai.



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R.SUBRAMANIAN, J.

Vsg

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