



C.R.P.No.177 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.No.177 of 2017
and C.M.P.No.707 of 2017

G.Suseela

.. Petitioner

Versus

- 1) Chinnapappa Goundar
- 2) Pachamuthu
- 3) Angamuthu @ Thangaraju
- 4) Mariyammal
- 5) Gurusamy
- 6) Marimuthu
- 7) Semalai Goundar

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 07.12.2016 passed in I.A.No.488 of 2016 in O.S.No.280 of 2009 on the file of the First Additional District Munsif Court, Bhavani.

For Petitioner : Mr.P.Mani
For Respondents : No Appearance

ORDER

This Civil Revision Petition has been filed challenging the order dated 07.12.2016 passed in I.A.No.488 of 2016 in O.S.No.280 of 2009 on the file of the First Additional District Munsif Court, Bhavani.



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2. Original Suit in O.S.No.280 of 2009 was filed for partition and permanent injunction by the petitioner and an application in I.A.No.488 of 2016 in O.S.No.280 of 2009 under Order 6 Rule 17 and Section 151 of the Civil Procedure Code has been filed to amend the plaint before the Court below. The Court below had dismissed the said application stating that any amendment which completely displaces the admissions in the plaint cannot be allowed. Aggrieved against the said order of dismissal, the petitioner has preferred the present revision.

3. According to the learned counsel for the petitioner, the petitioner's paternal uncle Gurusamy married the 4th respondent/Mariyammal and no child was born to them. Due to misunderstanding between them, the said Mariyammal deserted her husband Gurusamy and left the matrimonial home. Thereafter, she developed illegal contact with one Chinnathambi of Puthupatti and thereby gave birth to the 5th respondent and now, the fourth respondent is claiming false right over the properties of Gurusamy. It is the further contention of the learned counsel for the petitioner that to support the case of the respondents 4 and 5, they had created a divorce deed, a maintenance deed and a release deed all one in the same day of 30.12.1996.



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4. Further, the learned counsel for the petitioner submitted that the fourth respondent and Gurusamy were living separately from the year 1974 and therefore, Gurusamy adopted the petitioner as his legal heir. To deny the right of the petitioner, the respondents 4 and 5 have fraudulently fabricated forged documents. According to the petitioner, those documents are void and invalid and the petitioner lodged complaint before the District Registrar of Erode in Na.Ka.No.2674/E2/2016 dated 26.07 2016, for which, the 5th respondent has issued a reply notice, dated 31.08.2016 stating that the above documents are not declared as null and void. Hence, the petitioner came up with the petition to amend the plaint and to include the relief of declaration of the above documents are null and void. However, the Court below, had dismissed the petition, against which, the petitioner has preferred the present revision.

5. Heard the learned counsel for the petitioner. Though notice was served on the respondents and their names being printed in the cause list, there is no appearance for the respondents either in person or through counsel.

6. This Court perused the impugned order passed by the Court below. In the considered opinion of this Court, allowing the prayer of the petitioner to amend the plaint, with a huge delay will introduce a new cause of action and its



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scope is also clearly barred by limitation and it would ultimately change the nature and character of suit itself. Moreover, the contentions raised by the petitioner stating that the respondents 4 and 5 have fraudulently fabricated forged documents and created a divorce deed, a maintenance deed and a release deed is false. In view of the ratio propounded in *Modi Spinning and Weaving Mills Co. Ltd. v. Ladha Ram and Co.*, reported in AIR 1977 SC 680, this Court is of the view that the petition for amendment of plaint cannot be allowed by withdrawing the admissions made in the plaint so as to displace the defendants completely from the admissions made in the plaint. Any amendment which completely displaces the admissions in the plaint cannot be allowed.

7. This Court also opines that the petitioner's dilatory tactics to prolong the commencement of trial, cannot be entertained and this Court finds no infirmity in the order passed by the First Additional District Munsif Court, Bhavani, vide order dated 07.12.2016 in I.A.No.488 of 2016.

8. Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

20.06.2022

Index : Yes / No

Internet : Yes

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To:

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1) The First Additional District Munsif Court,
Bhavani.

2) The Section Officer,
V.R.Section, High Court, Madras.



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J.NISHA BANU, J.,

msv

Order made in
C.R.P.No.177 of 2017
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