



CRP.No.331 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.06.2022

PRONOUNCED ON : 14.10.2022

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.No.331 of 2017
and CMP.No.1503 of 2017

1.Tamizhselvi

2.Sadasivam

3.Venkateswaran

5

..Petitioners/Respondents 2, 4 and

/Defendants 2, 4 and 5

Vs.

1.Sivakumar

2.Jebamani

defendant.

..1st respondent/Plaintiff

.. 2nd respondent/3rd

Prayer : CRP filed praying to set aside the fair and final order of the

Additional District Munsif, Mayiladuthurai dated 28.11.2016 made in

I.A.No.502/2015 in O.S.No.284 of 2011.

For Petitioners : Mr.B.Jawahar



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For respondents : Mr.K.Govi Ganesan

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ORDER

This Civil Revision Petition is filed praying to set aside the order of the Additional District Munsif, Mayiladuthurai dated 28.11.2016 made in I.A.No.502/2015 in O.S.No.284 of 2011.

2. The plaintiff/1st respondent herein filed O.S.No.284 of 2011 for partition. Written statement has been filed by the defendants. After framing issues and the evidence of both sides were over, when the suit was posted for arguments, the plaintiff filed I.A.No.502 of 2015 seeking for amendment of the plaint.

3. In the petition for amendment of the plaint in I.A.No.502/2015, it has been stated by the plaintiff that pending suit, his mother /1st defendant passed away on 08.04.2013. When she was alive she has executed a Registered Settlement Deed dated 29.07.2011



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bequeathing her undivided 1/5th share in the suit property in his favour.

The knowledge of settlement deed was known after the death of his mother, hence, due to the changing circumstances, the plaint has to be amended.

4. The learned Judge, trial court, while going through the averments in the petition and submissions made in the counter found that originally the plaint prayer was filed seeking 1/5th share in the suit property, but after his mother's death, claiming that in view of the settlement deed he is entitled to 2/5 share in the suit property and sought such amendment in the plaint.

5. The learned Judge, relying on the decisions of the Honourable Supreme court of India reported in **2013 1 LW 213 [Abdul Rehman and another Vs. Mohd Ruldu and others]**, found that when the relief sought for would not change the nature of the suit and the amendment sought would not cause any prejudice to the defendants, the power of



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amendment should be exercised in the larger interest of doing full and complete justice between the parties and also to arrive at a conclusive decision in the suit, the amendment sought for is essential and in order to grant an opportunity to the plaintiff, to put forth his case, the petition has been allowed by the learned Judge.

6. Challenging the said order allowing the amendment, this civil revision petition is filed by the defendants 2, 4 and 5 as revision petitioners.

7. The learned counsel for the petitioners would submit that the mother of the 1st respondent/plaintiff died on 08.04.2013 but the amendment application has been filed only on 26.08.2015 after waiting for completion of trial and hence with an intent to drag on the proceedings, the amendment application has been filed and without considering these aspects, the court below allowed the said application. Reliance was placed on the decision reported in **(2009) 2**

Supreme Court Cases 409 [Vidyabai and Others Vs. Padmalatha



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and another] to support his contention that precondition that court should be satisfied that in spite of due diligence, party could not introduce amendment before commencement of trial.

8. Heard and perused the typed set of papers.

9. The facts of the case would go to show that the plaintiff filed suit for partition. The defendants filed written statement and contested the suit. After framing issues, both sides evidence was over and matter was pending for arguments of both sides. At that time, the plaintiff filed I.A.No.502 of 2015 in O.S.No.284 of 2011 seeking to amend the plaint. The said amendment was allowed.

10. The facts of the case and a perusal of the order passed by the learned Judge, trial court, would reveal that there is gross negligence on the part of the plaintiff who sought for amendment of the plaint on 26.08.2015 after completion of trial by raising the averment that after his mother's death on 08.04.2013, he has come to know about the

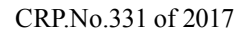


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settlement and so he filed the amendment application.

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11. As rightly contended by the defendants/revision petitioners, after the Civil Procedure Code (Amendment) Act, 2002 (Act 22 of 2002), amendment in the plaint cannot be made after the case was taken up in trial. Further, the determination of the division of the suit properties as to whether the plaintiff is entitled to his share; whether the mother/1st defendant's share to be divided to plaintiff or other defendants are to be decided in the suit after hearing both sides. Further, whether the settlement deed said to be executed by the mother of the plaintiff who died during the pendency of the suit and the veracity of such document are also to be decided only in the original suit. In such circumstances, the amendment would definitely change the nature of suit and would cause prejudice to the defendants as the defendants had been denied the opportunity to make their defence in their written statement and evidence in respect of amendment in the plaint.



“ 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 the matter before the commencement of trial.”

Proviso to Order 6 Rule 17 CPC provides that amendment of pleadings shall not be allowed when the trial of the suit has already commenced. Further the proviso appended to Order 6 Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction.

13. It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. So when the conditions precedent therefore as set out in the



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proviso to Order 6 Rule 17 of the CPC, are unless satisfied, in my considered opinion, the amendment allowed is erroneous.

14. In the light of the above reasonings, this Civil Revision Petition is allowed. The order passed in I.A.No.502 of 2015 in O.S.No.284 of 2011 stands set aside. The trial court is directed to proceed with the hearing of the suit and dispose of the suit on merits, within a period of six months from the date of receipt of a copy of this order.

14.10.2022

Index :Yes/No

Internet:Yes/No

Speaking order/Non-speaking order

nvsri

To

1.The learned Additional District Munsif, Mayiladuthurai.

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



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J.NISHA BANU, J.

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