



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 13.04.2022
CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.2283 of 2017

WEB COPY

R.Sudha

... Petitioner/Petitioner/
Plaintiff

Vs.

1. (*)M.Selvakumar

2.P.Rajendran

... Respondents/Respondents/
Defendants

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decretal order passed in I.A.No.351 of 2016 in O.S.No.118 of 2010, dated, 03.03.2017 on the file of the learned I Additional Subordinate Judge Court at Nagercoil.

For Petitioner : Mr.K.Vamanan

For Respondents : Mr.S.Rajasekar
for Mr.T.Lajapathi Roy

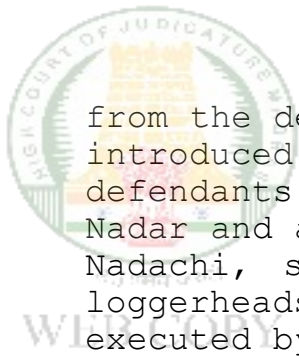
ORDER

The plaintiff in the suit is the revision petitioner.

2. The plaintiff filed a suit in O.S.No.118 of 2010 before I Additional Subordinate Court at Nagercoil with a prayer to declare the plaint schedule property as the property of the plaintiff. The plaintiff has further prayed to grant a decree to set aside the sale deed in document No.1420 of 2007 on the file of Sub-Registrar office, Kottaram as null and void.

3. Pending the suit, the original plaintiff, namely, Thanga Nadachi had passed away and her daughter Sudha was impleaded as the additional second plaintiff. The additional second plaintiff has filed I.A.No.351 of 2016 to amend the plaint. The proposed amendments are only with regard to the prayer and the Court fee and not with regard to the body of the plaint.

4. Since the first plaintiff has passed away, the second plaintiff wants to amend the prayer for declaration that the second plaintiff is the absolute owner of the plaint schedule property. Further, the second plaintiff has sought for recovery of possession



from the defendants. The prayer for recovery of possession, is introduced at the final stage of the suit is objected by the defendants. Admittedly, the, suit property belonged to one Murugiah Nadar and after his death, it devolved upon his wife, namely, Thanga Nadachi, son Selva Kumar and daughter Sudha. The parties are at loggerheads, based upon the certain documents said to have been executed by deceased Murugiah Nadar and Thanga Nadachi. Even, if the documents are not proved before the Court, the parties would continue to be co-owners. Hence, the objection with regard to the prayer for recovery of possession at this stage cannot be considered. The defendant is at liberty to raise the plea of limitation with regard to the prayer for recovery of possession at the time of trial.

5. The relief sought for in the plaint is actually not amended, but only rephrased. The other amendment in the plaint is only with regard to the Court fee in view of the inclusion of the prayer for recovery of possession and hence, it is consequential.

6. However, without considering the effect of the amendment, the learned trial Judge has dismissed the application on the ground that the application has been filed belatedly and after trial. When the cause of action and body of the plaint have not been amended, but the prayer and the consequential Court fee alone have been amended, that will not change the cause of action.

7. I find the order of the trial Court, rejecting the application for amendment of plaint is not legally sustainable. This Civil Revision Petition is allowed. Since the suit is of the year 2010, the learned I Additional Subordinate Judge, Nagercoil is directed to dispose of the suit on or before 31.12.2022 and report the same to the Registry.

8. Accordingly, this Civil Revision Petition is allowed. No costs.

Sd/-

Assistant Registrar(Adm.I)

**(*)Corrected as per the order of this Court dated 30.06.2022
in CRP(MD).2283 of 2017**

Sd/-

Assistant Registrar(Adm.I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

(*) to be substituted to the order already dispatched on 24.05.2022

- 1 The Additional Subordinate Judge I,
Nagercoil.
- 2 The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

Copy To

- 1 The Registrar(Judicial)
Madurai Bench of Madras High Court,
Madurai.
- 2 The Principal District Judge,
Kanniyakumari District @ Nagercoil.
- 3 The Section Officer,
Judicial Posting Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.K.VAMANAN, Advocate SR.No. 29161

Order made in
C.R.P (MD) No.2283 of 2017
Date:13.04.2022

SA(18.05.2022) 3P 7C
TR(20.07.2022) 3P 8C