



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	05.06.2023
Pronounced on	04.07.2023

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

A.Nos.1561 & 1562 of 2023 in
TOS.No.15 of 2019

Dr.M.Venkataramanan

... Applicant / Plaintiff in both Applications

Vs.

1.Mrs.G.Lakshmi
2.Mr.G.Saikrishnan
3.Mr.G.Rajkrishnan

... Respondents / defendants in both Applications

PRAYER in A.No.1561 of 2023: This Application has been filed under Order XIV Rule 8 of O.S.Rules r/w. Order VII Rule 14(3) of C.P.C., to permit the applicant / plaintiff to file additional documents mentioned in the list of documents annexed to the application as additional evidence on the side of the plaintiff.

PRAYER in A.No.1562 of 2023: This Application has been filed under Order XIV Rule 8 of O.S.Rules r/w. Order VI Rule 17 of C.P.C., to permit the applicant / plaintiff to amend the plaint by incorporating certain amendments in paragraph No.14 of TOS.



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In both Applications:

For Applicant : Mr.P.Haribabu

For Respondents : Mr.Raghunathan.S.R

COMMON ORDER

These Applications have been filed to permit the applicant / plaintiff to file additional documents mentioned in the list of documents annexed to the application as additional evidence on the side of the plaintiff and to permit the applicant / plaintiff to amend the plaint by incorporating certain amendments in paragraph No.14 of TOS.

2. The applicant is the plaintiff. These applications have been filed to amend the plaint and also to receive additional documents. The applicant / plaintiff has stated that some of the documents which are vital to the case of the plaintiff have been traced recently and hence, permission should be granted to file those documents and also to amend the plaint for including certain pleadings.

3. It is submitted by the learned counsel for the plaintiff that one Balakrishna Naidu acquired the property to the extent of 0.29 Cents by



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family partition by virtue of the partition deed dated 22.10.1930; after his death, his wife Subbulakshmi Ammal and three daughters viz., Rajam @ Andal Ammal, Kasthuri Bai and Rukmini Ammal inherited the same; the wife and the three daughters of the Balakrishna Naidu entitled to $\frac{1}{4}$ th share each.

3.1. One of the co-sharers Subbulakshmi Ammal had executed a settlement deed in respect of $\frac{1}{4}$ th share on 25.03.1957 in favour of Gopala Ramanan by retaining the life interest with her; the settlement is with condition that Gopala Ramanan had to perform her last rituals; since he did not perform the last rituals of Subbulakshmi Ammal, he is not entitled to get the benefit of the settlement deed; Gopala Ramanan died on 02.06.2015 leaving behind his wife and children who are the respondents / defendants herein; the defendants had also executed a power of attorney in favour of Gopala Ramanan's mother Rajam Muthukrishnan; since the documents were not traceable at the time of filing the Original Petition, permission is now sought to produce all those documents along with liberty to amend the pleadings in the line of those documents.



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4. The respondents / defendants have filed counter by stating that the issue involved in TOS is only with regard to the genuineness and the validity of the Will and the question of title cannot be adverted into; the issues have also been framed only on those aspects; after the trial is commenced, the present applications have been filed just to enhance the scope of the suit and it is not legally permissible; in respect of the settlement deed executed by one Subbulakshmi, a suit has already been filed by her grand daughter Viswa Lakshmi in O.S.No.183 of 2008 for declaration and the same was decreed; the appeal challenging the said decree was also dismissed.

4.1. The applicant / plaintiff has also filed a suit in O.S.No.432 of 2007 seeking to declare the document No.118/2001 as null and void and the same was decreed; having accepted the benefit of the decree, now, the plaintiff is estopped to take a different stand; no acceptable explanation is given as to why the documents have not been filed at the time of filing of the suit; the plaintiff has filed these applications only as an after thought; the plaintiff had not chosen to file any reply statement and came out with



the applications to receive additional documents and amend the plaint.

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5. The learned counsel for the applicant / plaintiff further submitted that once the original petition seeking Probate or Letters of Administration becomes contentious, it gets converted into Testamentary Original Suit and thereafter, the Court has to adopt the procedure contemplated in Civil Procedure Code and the rules of Civil Procedure; the documents now sought to be produced are the additional documents and they got mingled with the heap of papers and hence, they cannot be produced at the earliest point; the testatrix has preserved certain documents in her custody and the production of those documents are necessary to substantiate not only her sound state of mind and also her right over the property; it is also necessary for the plaintiff to establish that the testatrix was in a fit state of mind and capable of understanding the execution of the Will.

5.1. The documents are filed only to substantiate the right of the testatrix over the property and not in relevance to the title which dwelt on her on the date of death of her father conferring equal interest on par with



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her other sisters and mother; this is required only to substantiate her right to execute the Will and to bequeath in favour of the legatee; it is not the question of proving title but even in the absence of title, the Probate Court is confined only on the issue as to the execution of the Will and the legatees are bound to substantiate; hence there is no deviation in making amendment relevant to the capacity of the testatrix after discovery of documents in her custody.

6. In a nutshell, the applicant / plaintiff attempts to convey that the amendment and the additional documents are allowed to be made / produced for the purpose of substantiating the mental capability of the testatrix at the time of executing the Will. It is stated in the written arguments submitted by the learned counsel for the applicant / plaintiff that the object of amendment is not for proving the title of the testatrix, but in order to substantiate the right of the testatrix over the property. It is claimed by the plaintiff that the testatrix has got the right and title over the property and only in view of the same, she has written the Will. Having said that and filed the proceedings for grant of Letters of



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Administration, the duty of the plaintiff is to prove that the Will is true and genuine.

7. The learned counsel for the applicant / plaintiff has filed his written arguments by stating the following contents in paragraph No.8 which is extracted hereunder:

“It is respectfully submitted that it is not a question of proving the Title. Even in the absence of Title, the Probate Court has confined only on the issue as to the execution of the Will and the Legatees are bound to substantiate. Once it becomes in contentious form, the procedure is governed under CPC.”

8. The above contention of the learned counsel for the applicant / plaintiff would convey that when the proceedings filed seeking Probate becomes contentious, the testamentary Court has to deal with the title dispute between the parties as well. Just because the testamentary Court adopts Civil Procedure Code while dealing with the testamentary suit, the scope of the testamentary suit cannot be extended to that of a title suit. Even if the plaintiff presumes title in favour of the testatrix to execute the



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Will and gets a probate or letters of administration as the case may be, the defendants can prove in some other proceedings that the testatrix herself did not have any title to execute the Will in respect of the suit property. In such case, the beneficiary of the Will is bound by the said decree irrespective of the fact whether the Will was probated or not or whether the Letters of Administration was granted or not.

9. By way of producing the additional documents, the applicant / plaintiff cannot be allowed to introduce a civil suit into the testamentary original suit and to embarrass or abuse the process of the Court by unnecessarily harassing the defendant and waste the time of the Court. The position of law in allowing the amendment is well settled that the Courts shall not allow the amendment which would change the nature of the suit. Since the scope of the testamentary original suit is attempted to be expanded to that of dealing with the title of the testatrix, the amendment is seen to be affecting the root of the matter.

10. It is seen from the counter of the respondents that the parties have



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filed some earlier proceedings which dealt about the earlier transactions done by the different sharers in respect of the portion of the suit property.

The plaintiff has filed TOS only on the basis of the alleged Will dated 05.12.1997 executed by one Rajam @ Andal Ammal. So far as the suits of this nature are concerned, the Court is obliged to analyze the true and genuine nature of the Will and to render a finding on the same, even when the testamentary proceedings become contentious. The testamentary Court is not bound to decide on the title / possession of the testator. Only in a suit for title, those issues can be dealt.

11. The amendment sought to be made by the plaintiff in the plaint is predominantly with regard to establishment of title which is not the issue triable by the testamentary Court. By way of amendment or by filing additional document, the plaintiff cannot be allowed to elongate the scope of the testamentary suit as that of a title suit. In the testamentary suit, it is sufficient for the propounder to prove the genuineness and the validity of the Will and also that the executant has executed the Will in a sound disposing state of mind. By way of allowing the amendment or framing



any additional issues as to the title, this Court cannot change the testamentary jurisdiction.

12. In view of the above stated reasons, the application in A.No.1561 of 2023 to receive additional documents and the application in A.No.1562 of 2023, to amend the plaint are dismissed.

04.07.2023

Index: Yes/No
Speaking / Non Speaking Order
Neutral Citation : Yes/No
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R.N.MANJULA, J

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