



.CRP.No.890 of 2021.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 21.03.2023

Delivered On: 30.06.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CRP.No.890 of 2021
and
CMP.No.7307 of 2021

S.Keerthana ... Petitioner/Plaintiff
Vs.

1. V.Vijayalakshmi

2. The Sub-Registrar,
Joint – 1 Sub-Registrar Office,
Tiruppur.

3. Pangajam

4. S.Sumathi ... Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal Order dated 22.02.2021 made in I.A.No.80/2020 in O.S.No.67/2016 on the file of the learned Additional District Judge – I, Tiruppur.

For Petitioner : Mr.D.R.Arun Kumar

For Respondents : Mr.T.M.Hariharan for R1 & R3
Mr.V.Jeevagiridharan



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Additional Government Pleader for R2
No Appearance - R4

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal Order passed by the learned Additional District Judge – I, Tiruppur in I.A.No.80/2020 in O.S.No.67/2016, dated 22.02.2021.

2. The learned Counsel for the Petitioner/Plaintiff submitted his arguments.

3. As per the submission of the learned Counsel for the Petitioner, the Petitioner is the Plaintiff in O.S.No.67/2016 on the file of the learned first Additional District Judge, Tiruppur. She had filed the Suit for partition, in which the first Defendant is the paternal Aunt. The second Defendant is the Sub-Registrar, Joint – 1 Sub-Registrar Office, Tiruppur. The third Defendant is the grandmother of the Plaintiff. Fourth Defendant is the mother of the Petitioner/Plaintiff.

4. As per the plaint averments, the Plaintiff's grandmother



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purchased the property in the year 1971 through a registered sale deed bearing No.1793/1971. The late grandfather viz., Rajalingam Chettiar died intestate leaving the property to his only son viz., V.R.Kuppusamy Chettiar, grandfather of the Plaintiff and his grandson viz., Senthil Kumar as his legal heirs of the said Rajalingam Chettiar and each one being entitled $\frac{1}{2}$ share of the property. The Plaintiff's great-grandfather Rajalingam Chettiar was the Kartha of the Hindu joint family living along with his son Kuppusamy Chettiar and grandson Senthil Kumar till his death in 1978. The Plaintiff's father Senthil Kumar was born on 05.05.1966. The Suit property is an ancestral property which is in the hands of the Plaintiff's grandfather Kuppusamy Chettiar and the Plaintiff's father Senthil Kumar got an equal right by birth. The Plaintiff's father became a Coparcener with his father Kuppusamy Chettiar in respect of the Suit property. The first Defendant/daughter of Kuppusamy Chettiar was married in the year 1980 and she was not entitled to any right or benefit of the property owned by her grandfather Rajalingam Chettiar. On the death of the father of the Plaintiff/Senthil Kumar i.e., on 06.11.1990, his half of the share devolved into his only



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daughter, the Plaintiff Keerthana. On the death of Plaintiff's paternal grandfather Kuppusamy Chettiar on 04.04.2009, his half of the share devolved upon his children namely, the Plaintiff viz., Keerthana who is the grandfather of Kuppusamy Chettiar and daughter of Senthil Kumar and Vijayalakshmi/first Defendant, daughter of Kuppusamy Chettiar. The Plaintiff was entitled to three-fourth share and the first Defendant was entitled to one-fourth share of the ancestral property. The Plaintiff is the only daughter of the Senthil Kumar. Therefore, Plaintiff filed this Suit seeking partition of the property into four equal shares and allotment of three shares to Plaintiff. After filing the Suit, it is the contention of the Plaintiff that she came to know about the Will executed in favour of the paternal grandmother/D-3 viz., Pangajam by the paternal grandfather Kuppusamy Chettiar. The Petitioner filed a Petition in I.A.No.341/2019 for producing the documents/Will which was allowed on 21.01.2020. Subsequently, the Petitioner had filed I.A.No.80/2020 seeking to amend the Plaint under Order VI Rule 17 of the Code of Civil Procedure, thereby seeking a declaration that the Will dated 04.03.2008 bearing Document No.94/2008 as null and void and legally enforceable and also to amend the Court fees particulars of valuation. The Respondents filed a



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counter disputing the same stating that the Petitioner had filed the Petition for examination-in-chief and filed the proof affidavit on 05.11.2019. She filed I.A.No.341/2019 seeking to mark a registered copy of the Will dated 04.03.2008 which was allowed and marked as Ex.A-8. Subsequently, the case was posted for cross-examination and at that stage, this Petition had been filed. The Petitioner and her mother were aware of the Will, they had issued registered notice to the third Defendant, the first Defendant/Vijayalakshmi, the Tahsildar Tiruppur Taluk and to the Sub-Registrar, clearly admitting the Will and each claiming 1/6th share in the property. The Petitioner and her mother had also issued a publication on 03.02.2016. The Respondent issued a reply notice on the same day. The original Complaint was verified and signed by the Plaintiff on 31.03.2016. She purposefully omitted to implead the third and fourth Defendant. Both the Plaintiff and her mother are enjoying the properties bequeathed by the philanthropist V.R.Kuppusamy Chettiar. Before executing the registered Will and the last testament dated 04.03.2008 declaring an intention to execute the Will by his Wife, daughter and daughter-in-law and also cataloged the properties that were



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enjoyed by the beneficiaries. Kuppusamy Chettiar died on 04.04.2009, the Will had been coming into effect on his death.

5. On conducting the enquiry, the learned District Judge, Tiruppur had dismissed the I.A.No.80/2020 by an Order dated 22.02.2021 by observing as follows:



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“This Court has gone through the entire case records and from the perusal of the same, already the present Petitioner has filed I.A.No.826/2016 for amending the Plaint for some other prayer and that was allowed by this Court. Likewise, subsequently in the year 2018, the Petitioner has filed I.A.No.992/2018 under Order VI Rule 17 regarding the change of shares and that was also allowed by this Court. It is also clear that even in the year 2016 the Defendants have filed written statements as well as additional written statement denying the right of the Petitioner in respect of the Suit property and they have also filed the Office copy o the legal notice issued on behalf of the present Petitioner. More over, in the present affidavit the Petitioner has not stated any explanation for not praying the present relief earlier. The affidavit is silent regarding that aspect.

This Court of the considered view that the said decision of our Hon'ble High Court squarely applicable to the fact of this application, since the present Petitioner has filed two similar applications in which the proposed amendment was not available by her. Further, even in the year 2016 written statement has been filed stating about the execution of the Will and in fact the legal notice issued on behalf of the present Petitioner is also filed by the



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Respondents even in the year 2016. Further more, in the affidavit no explanation has been given for non filing the present Petition at the earliest point of time. Moreover, trial has already commenced and pending for cross-examination of P.W-1.

Furthermore, the relief of declaration in respect of a document has to be prayed within 3 years from the date of knowledge of the document.”

6. It is the contention of the learned Counsel for the Revision Petitioner/Plaintiff before the trial Court and the Petitioner in I.A.No.80 of 2020 that the amendments are to be liberally allowed.

7. It is the contention of the learned Counsel for the Petitioner that the Petitioner was born on 29.05.1991. The Will was executed on 04.03.2008. On the day of execution of the Will, the Petitioner was a minor. The learned Counsel for the Petitioner relied on the ruling reported in **AIR 2006 SC 3608: MANU/SC/8139/2006** in the case of **Prem Singh and Ors Vs. Birbal and Ors**, in which the application is not barred by limitation and the Petition is to be allowed. The learned



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Counsel for the Petitioner relied on the ruling reported in **2022 SCC Online SC 1128** in the case of ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another*** in which at the last page of the judgment, the Hon'ble Supreme Court had given bullet points in V, VII, IX are applicable to the facts of this case.

8. It is the contention of the learned Counsel for the Petitioner that Article 59 of the Limitation Act is not applicable. Therefore, the Order of the learned Additional District Judge, Tiruppur dismissing the I.A.No.80 of 2020 for amendment is to be set aside.

9. The learned Counsel for the Respondent relied on the disputed contention of the learned Counsel for the Petitioner stating that the great-grandfather of Rajalingam Chettiar had filed the Suit in O.S.No.67 of 2016 seeking partition. The first Defendant in the Suit is the daughter of Kuppusamy Chettiar. The third Defendant is the Wife of Kuppusamy Chettiar. Fourth Defendant is the daughter-in-law of Kuppusamy Chettiar (mother of the Plaintiff). The mother of the Plaintiff and the Plaintiff were aware of the Will executed by the grandfather of the



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Plaintiff. Even otherwise, on the date, the Defendants filed a written statement and the Plaintiff was aware of the Will. When the Plaintiff had let in evidence, she had sought marking of the Will. Therefore, she was aware but she had not filed any Petition to amend the Plaint before the commencement of trial. There was an exchange of notices between the Plaintiff and the Defendants. The Defendant had clearly stated that the Will executed by the grandfather in favour of the grandmother, paternal Aunt, the mother of the Plaintiff and the Plaintiff(the wife of the testator/D-3), daughter of the testator is D-1, daughter-in-law of the testator is D-4, granddaughter of the testator/Plaintiff. Therefore, she was aware of the Will before the institution of the Suit. After the Suit was instituted, the Defendants had clearly stated about the Will in the written statement filed in the year 2016. Still, she did not amend it. Only after evidence of the Plaintiff was recorded and after the commencement of trial, she had filed this amendment Petition. Therefore, the Order of dismissing the Petition for amendment by the learned First Additional District Judge, Tiruppur dated 22.02.2021 is well-reasoned Order and it does not warrant any interference of this Court exercising discretion



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under Article 227 of the Constitution of India.

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10. The learned Counsel for the Revision Petitioner pointed to the observation of the Hon'ble Supreme Court in **2022 SCC Online SC 1128** in the case of ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another*** , the relevant portion is extracted hereunder:

“70. Our final conclusions may be summed up thus:

(I) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(I) if the amendment is required for effective



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and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

© the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right(in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(I) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the Suit,

(iii) the prayer for amendment is malafide, or



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(iv) *by the amendment, the other side loses a valid defence.*

(v) *In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.*

(vi) *Where the amendment would enable the Court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.*

(vii) *Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.*

(viii) *Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the *Plaint*.*

(ix) *Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.*

(x) *Where the amendment changes the nature of the *Suit* or the cause of action, so as to set up an entirely new*



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case, foreign to the case set up in the Complaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the Complaint, and is predicated on facts which are already pleaded in the complaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the Court is required to be liberal in its approach. The Court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the Court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta V. Gagninder Kr. Gandhi, 2022 SCC Online Del 1897)”

11. In the light of the ruling cited by the learned Counsel for the Petitioner and on perusal of the Complaint, written statement and the affidavit of the Petitioner in I.A.No.80/2020, counter filed by the Respondent in



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I.A.No.80/2020 and Order passed by the learned First Additional District Judge dismissing the Petition, it is found that in the light of the ruling cited by an important factor to be weighed has rendered complete justice. The Court shall not go into the merits of the case, the amendment or hyper technicalities of the case. If the Provision of the Order VI Rule 17 of the Civil Procedure Code as amended in 2002 is to be invoked, the Petitioner is not entitled to amend the Suit after the trial had commenced.

12. The contention of the learned Counsel for the Petitioner that the Petitioner had approached the Court seeking to declare the Will as null and void within 12 years from the date of attaining majority as per the Limitation Act. As per the reported ruling ***AIR 2006 SC 3608: MANU/SC/8139/2006*** in the case of ***Prem Singh and Ors Vs. Birbal and Ors***, is found acceptable and also, the points raised in the Sanjeev Builders' case in Paragraph Nos.5,7 and 9 is applicable to the facts and circumstances of the case. The Will is sought to be declared as null and void by the Petitioner herein as Plaintiff, in the body of the Plaint Paragraph No.5(a) she had stated so. In the relevant Paragraph, she had



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not sought relief of declaration by declaring the Will dated 04.03.2008 as null and void.

13. It is the contention of the learned Counsel for the Petitioner herein that as per the Ruling in ***AIR 2006 SC 3608: MANU/SC/8139/2006*** in the case of ***Prem Singh and Ors Vs. Birbal and Ors***, the Plaintiff has to prove that the Will was executed under pressure and coercion as it is a registered Will. The registered Will gets the presumption that it was duly executed. Therefore, she had to exercise the burden that seeks the Will dated 04.03.2008 to be declared as null and void which was executed under the circumstances, wherein the paternal grandmother of the Plaintiff and the paternal aunt of the Plaintiff exercised pressure on the paternal grandfather to execute the Will in their favour as it is not a self acquired property, but it was an ancestral property and those facts are to be considered only during trial. The Plaintiff had sought amendment when the case was posted for cross-examination of the Plaintiff as P.W-1. As stated earlier, she had already stated in the averments regarding the Will but in the relevant portion of



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the plaint, she sought to declare the will as null and void. Therefore, if the amendment is not allowed, the Plaintiff will be prevented from taking the dispute to its logical conclusion in the trial of the suit. There may not be any difference if this amendment is allowed, as the final outcome will not change drastically or affect the interest of the defendants in this case. The Will alleged to have been executed was a registered Will. It is difficult to prove that the Will was executed under coercion and pressure on the testator. It is to be decided only in the course of the trial. The Plaintiff is only seeking to amend the relief portion in the Plaint, whereby seeking the relief of declaration of the Will as null and void. The Suit is for partition and parties are all women. The Plaintiff is the granddaughter of Kuppusamy Chettiar and Defendants 1 and 3 are daughter and Wife respectively of Kuppusamy Chettiar. The fourth Defendant is daughter-in-law of Kuppusamy Chettiar. Therefore, whether the relief of partition can be granted or as per the Will, all the four are entitled to a share, are to be decided only in the fag end of trial, based on the evidence. If the Plaintiff is prevented by not allowing her to amend the Plaint, she cannot take the dispute to the logical ends. In the light of the ruling cited by the learned Counsel for the Revision



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Petitioner in ***AIR 2006 SC 3608: MANU/SC/8139/2006*** in the case of ***Prem Singh and Ors Vs. Birbal and Ors***, and in the light of the ***2022 SCC Online SC 1128 in the case of Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another*** on the points in para 5,7 and 9, the Petition is allowed.

14. Even though the Order passed by the learned First Additional District Judge dismissing the I.A.No.80/2020 is found as per the Provisions of Order VI Rule 17 of the Civil Procedure Code as amended in 2002, it has ended in failure of justice to the Petitioner. Therefore, exercising the discretion of this Court under Article 227 of Constitution of India, this Court has to necessarily interfere with what the Plaintiff has already stated in the body of the Plaint regarding Will but had failed to carry out the same in the relief portion. Under those circumstances for complete adjudication of the dispute and for rendering justice, the Order of the learned Additional District Judge, Tiruppur dismissing the Petition is to be interfered with and is to be set aside.

15. Point for consideration is answered in favour of the Petitioner



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and against the Respondent.

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In the result, this ***Civil Revision Petition is allowed.*** The order passed by the learned First Additional District Judge, Tiruppur in I.A.No.80/2020 in O.S.No.67/2016 is set aside. Consequently, connected Miscellaneous Petition is closed. No costs.

30.06.2023

dh

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

1. The Additional District Judge – I,
Tiruppur.

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



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SATHI KUMAR SUKUMARA KURUP, J.

dh

Pre-delivery Order made in
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