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C.R.P.No.1468 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

C.R.P.No.1468 of 2020

C.M.P.No.8481 of 2020

Gowharjan

... Petitioner

Vs.

1. Mohamoothajan
2. Mdm.Ameerunisa Bee
3. Mdm. Gulzar Begum
4. Mdm. Alam Ahra Begum
5. Abdul Jaleel
6. Kadhar Bee

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of

India to set aside the order passed in I.A.No.81 of 2020 in O.S.No.36 of 2012 dated 27.02.2020 on the file of the learned Subordinate Judge, Chidambaram and allow the said I.A.

For Petitioner : Mr.A.Muthukumar

For Respondent : Mr.N.Sankaravadivel for R1
Mr.A.Ramasamy for R5 –
No appearance Lower court counsel

ORDER

The Civil Revision Petition has been filed to set aside the order passed in I.A.No.81 of 2020 in O.S.No.36 of 2012 dated 27.02.2020 on the file of the learned Subordinate Judge, Chidambaram and allow the said I.A.



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2. The brief facts of the case in the nutshell is as follows:-

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The petitioner is the plaintiff and the respondents are the defendants in the suit in O.S.No.36 of 2012. The petitioner / plaintiff preferred the said suit to pass a preliminary decree for partition and separate possession of plaintiff's 1/5th share in the suit items and to pass a final decree by appointing a commissioner to divide the properties by metes and bounds and allot plaintiff's 1/5th share, to deliver the properties so allotted free from obstruction and to determine mense profits. Resisting the claim, the written statement was filed by the 1st respondent / 1st defendant. Pending suit, the petitioner of preferred I.A.No.81 of 2020 praying to receive the reply statement with regard to the execution of wakf deed by Mahaboob bee and requesting to treat the recitals as part thereof. A counter was filed to the said I.A., by the 1st respondent stating that the said reply statement is totally contradictory to the pleadings in the plaint and is also self destructive. Such contradictory pleadings by petitioner / plaintiff cannot be permitted. The court below dismissed the said I.A., hence this petition.

3. The learned counsel for the petitioner would submit that the petitioner has filed the suit claiming that the 1st item of the suit property is available for partition, as the estate of her mother. During the course of cross examination of the 1st respondent / D.W.1, power agent of the 1st



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defendant /1st respondent herein, the petitioner came across a registered Will executed by the mother of parties, wherein she has dedicated the 1st item of the property to Wakf. The said registered Will was marked as Ex.A.5, on the admission of D.W.1 during his cross examination. He has also admitted that he is one of the attestors to the said registered Will, Ex.A.5 and admitted his signature. Since the mother of the parties under Ex.A.5 has dedicated 1st item of suit property to a Wakf, the said property cannot be partitioned. Further, in a suit for partition, the court has to necessarily decide as to whether all or any of the properties were dedicated to any trust or available for partition. When a particular item of the suit property is a wakf property, the trial court cannot shut its eyes and pass preliminary decree for the said item also. The dismissal of the petition for reception of reply statement indicates that the trial court has already made up its mind to pass preliminary decree for partition without adjudicating as to whether the first item is a wakf property or not on the ground that the reply statement amounts to amendment of plaint without understanding the consequences of non determination of the character of the 1st item of property. Hence prayed to allow the present petition.

4. That apart, the learned counsel for the petitioner in support of his



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contentions has relied on the Judgment of the **Hon'ble Supreme Court** reported in **AIR 1975 Madras 51 [Veerasekhara Varmarayar Vs. Amirthavalliammal and Others]** and the order of this Court reported in **(2004) 3 M.L.J., 399 [Chellammal Vs. Venkitammal]**

5. Per contra, the learned counsel for the 1st respondent submits that the 1st respondent filed written statement on 05.08.2013, after completion of evidence of the 1st defendant, the petitioner / plaintiff filed a petition, on 30.01.2020, after lapse of 7 years to receive reply statement with a contention contrary to the original pleading by introducing a Will dated 11.09.1998 in respect of the 1st item of the suit property that it was dedicated for religious purpose. Further, the reply statement can be allowed only to give clarification regarding the pleading of the petitioner / defendants and not to change the nature and scope of the original pleadings. Further, if the reply statement is allowed, it will definitely amount to substantiate a new cause of action. Accordingly pleaded that the order passed by the court below is correct in the eye of law and does not require any interference.

6. Heard the learned counsel on either side and perused the documents placed on record.



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7. It is the contention of the petitioner that the mother of the petitioner and the respondents 1 to 4, namely, Mahaboob bee had executed a registered deed of Wakf on 11.01.1998 and the same was duly registered and was also marked during the cross examination of D.W.1, who is an attester to the said document and that the petitioner has omitted to plead the said document in the plaint, hence the reply statement is essential. Whereas, it is the contention of the 1st respondent that the petitioner has not stated any reason for not stating the same in the earlier pleadings and now, stating in the reply statement, would definitely amount to amendment of plaint and the same cannot be permitted.

8. On going through the documents placed on record, it is seen that the suit was filed by the petitioner / plaintiff in the year 2012, wherein with regard to the suit item No.1, it is averred that suit item 1 was purchased in the name of Mahaboob Bee and daughter viz., 1st respondent from out of the earnings and funds of petitioner's father, namely, Shaik Mohamed Bin Haider for the benefit of the family and they decided to invest in item 1 for their comfort stay, whereas, in the petition in I.A.No.81 of 2020, the petitioner / plaintiff has taken a contra pleading that Mahaboob bee, mother of the petitioner and the respondents executed a registered deed of Wakf



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way back on 11.01.1998, if the petitioner is really aggrieved, he ought to have resorted the remedy by filing necessary document / petition at the earlier point of time, but now, nearly after 8 years from the date of filing of the suit and nearly after 22 years from the date of alleged wakf deed dated 11.01.1998, the impugned I.A., seeking to receive reply statement is nothing, but only to fillup the lacuna, hence cannot be accepted.

9. It is relevant to note that the reply statement on the guise of amending or altering or substantiating a new cause of action in the plaint cannot be permitted. Further, the case is at the stage of evidence of the 5th respondent and about to be completed and when there is an ambiguity, the court below will very well seek the petitioner / plaintiff to clarify the issues, but in this case, the court below has not sought for any clarification, as such, no clarification is required, hence the Order of this Court relied on by the learned counsel for the petitioner reported in **(2004) 3 M.L.J. 399 [Chellammal Vs. Venkitammal]** will not in any way come in aid to the petitioner.

10. That apart, as per the facts and circumstances of a particular case, the court below will decide the issue, as per relevant procedure. The admission of plea can be decided by the trial court at the time of considering



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arguments, deposition and as per relevant materials. Further, when the alleged document, viz., wakf deed dated 11.01.1998 was filed, the court had admitted the said document, and hence the contention that

the trial court has already made up its mind to pass a preliminary decree for partition without adjudicating as to whether first item is a wakf property or not, does not at all arise.

11. Considering the above said facts and circumstances of the case and the fact that the petitioner / plaintiff has not mentioned the alleged wakf deed while examining Pws and Dws and only at the verge of completion of 5th defendant's evidence, the Impugned I.A., was filed and that the delay is also huge and further fact that the reply statement is contrary to the original pleadings and same may be permitted only to give clarification regarding the pleading of the respondents / defendants and not in general principle and not to change the nature and scope of original pleadings, moreover, only on a given circumstances of a particular case. If the said reply statement is allowed, it will definitely amount to substantiate new cause of action and hence this Court is of the view that the court below had passed an order, which is perfectly valid in the eye of law and does not warrant any interference by this Court.



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Accordingly, the present Civil Revision Petition is dismissed.

Consequently, connected miscellaneous petition is closed. No costs.

09.02.2023

Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order

To

The Subordinate Judge,
Chidambaram



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V.BHAVANI SUBBAROYAN J.

ssd

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