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C.R.P(PD)(MD).No.755 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.06.2023

Pronounced on : 28.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(PD)(MD).No.755 of 2019

and

C.M.P(MD)No.4598 of 2019

Shanthi

... Petitioner/Plaintiff

Vs.

1.Indurani

2.Sumathi

3.Malathi

4.Kanchana

5.Mahalakshmi

6.Dhileepan

... Respondents/Defendants

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 02.03.2019 passed in I.A.No.115 of 2019 in O.S.No.140 of 2015 on the file of the VI Additional District Judge, Madurai and allow the present Civil Revision Petition.

For Petitioner : Mr.R.Balakrishnan
for Mr.A.Rahul

For R1 : Mrs.A.S.Rajeswari

For R2 to R6 : No Appearance



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ORDER

This Civil Revision Petition is filed against the fair order and decreetal order dated 02.03.2019 made in I.A.No.115 of 2019 in O.S.No. 140 of 2015 on the file of the VI Additional District Court, Madurai.

2. The brief facts of the case:

The revision petitioner is the petitioner in I.A.No.115 of 2019 in O.S.No.140 of 2015 on the file of the VI Additional District Court, Madurai. The revision petitioner has filed a main suit for partition against the respondents/defendants. The respondents/defendants filed their written statement. During trial, the first respondent/first defendant was examined as DW1. At this stage, the revision petitioner has filed a petition in I.A.No.115 of 2019 to amend the averments in the plaint. The first respondent/first defendant alone resisted the petition. After hearing both, the Trial Court has dismissed the petition on 02.03.2019. Aggrieved by the order of the Trial Court, the revision petitioner has approached this Court by way of this Civil Revision Petition.

3. Heard both sides and perused the records in this Civil Revision Petition.



4. The learned counsel appearing for the revision petitioner has argued that the revision petitioner and the respondents 2 to 5 are children of one Krishnan and the first defendant. The revision petitioner has filed the main suit for partition. The father of the revision petitioner purchased "A" schedule property in the name of her mother first respondent/first defendant. The first respondent executed the registered settlement deed dated 21.09.2015 in favour of the revision petitioner and the respondents 2 to 5 in respect of "A" schedule property and delivered possession. While so, suppressing the registered settlement deed, the first defendant as D.W.1 stated in her evidence that she orally made a settlement deed dated 21.09.2005 and later cancelled the settlement deed on 27.06.2006. So, the revision petitioner wanted to amend the plaint based on the evidence of D.W.1 without altering the relief. The amendment sought by the revision petitioner would not change the nature of the suit or cause of action. It is a settled principle of law that all the 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 and equally where the amendment is necessary for the Court to effectively adjudicate on the main issues on controversy between the parties and the Court is required to be liberal in its approach and amendment can be allowed at any stage.



5. In support of his arguments, the learned counsel for the revision petitioners has relied on the decision of the Hon'ble Apex Court reported in **(2022) (6) CTC 485** in the case of **Life Insurance Corporation of India /v/ Sanjeev Builders Private Limited and Anr.**, wherein it is held in paragraph No.70 as follows:

"70.(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 6, Rule 17 of the C.P.C.

(iii) The prayer for amendment is to be allowed-

(i) if the amendment is required for effective 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

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



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The Trial Court has failed to consider the above facts and the guidelines issued by the Hon'ble Supreme Court. The learned counsel for the revision petitioner further submitted that the respondents 2 to 6 have not contested the amendment petition before the Trial Court. Therefore, the impugned order has to be set aside and the amendment sought for by the revision petitioner may be allowed.

6. The learned counsel for the first respondent has contended that the first respondent is the mother of the revision petitioner and other respondents and she is living by deriving means from the "A" schedule property. The first respondent has filed the petition in I.A.No.115 of 2019 to receive the income from the "A" schedule property till the disposal of the main suit. To prevent the said income, the revision petitioner has filed this petition belatedly after she let in evidence as D.W.1. Already the revision petitioner filed the petition to amend the plaint before commencement of trial and the same was allowed. Now, the revision petitioner again filed the present petition after closure of plaintiff's side evidence and let in evidence by the first respondent as D.W.1. The amendment is belated and caused for alteration of cause of action. Therefore, the impugned order of the Trial Court is correct and



this Civil Revision Petition may be dismissed.

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7. On hearing both and on perusal of order of Trial Court, it is clear that the revision petitioner has filed the main suit seeking the relief of partition. On perusal of plaint, it is clear that the "A" schedule property was gifted by the Krishnan and first respondent in favour of the revision petitioner and respondents 2 to 5. The first respondent has filed her written statement on 06.01.2016. The first respondent was examined as D.W.1 in the year 2018 and during her cross examination she deposed that she cancelled the gift deed as the activities of her children are against the first respondent. On perusal of written statement of the first respondent such contention is not made in her contention. In this circumstance, the revision petitioner has filed the present petition to amend the plaint pleadings based on the evidence of D.W.1. In the decision relied on by the learned counsel for the revision petitioner, the Hon'ble Supreme Court has clearly held that all the amendments, which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side and equally where the amendment is necessary for the court to effectively adjudicate on the main issues on controversy between the parties have to be allowed and the Court is required to be liberal in its approach and amendment can be



allowed at any stage.

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8. Admittedly, the parties are close relatives and the suit is filed for partition. The revision petitioner has stated that the amendment has not changed the cause of action or the relief claimed in the suit. There is no strong denial by the respondents. Except the first respondent, other respondents have not opposed the petition for amendment before the Trial Court. Considering the facts and circumstances of the case, the amendment can be allowed only as per deposition of D.W.1, that will not cause any prejudice to the parties. It is for both parties to prove their respective averments and contention by producing acceptable evidence. It is pertinent to note here that on perusal of written statement of the first defendant, there is no contention that she cancelled the gift. Further, the respondents have not stated anything that the revision petitioner wants to introduce a new pleading. The Trial Court has also not considered the above aspects and the impugned order of the Trial Court is incorrect and the same is liable to be interfered by way of this Civil Revision Petition.

9. In the result, this Civil Revision Petition is allowed. The order of the Trial Court passed in I.A.No.115 of 2019 in O.S.No.140 of 2015 on the file of the VI Additional District Court, Madurai is set aside and



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the said petition in I.A.No.115 of 2019 in O.S.No.140 of 2015 is allowed.

No costs. Consequently, connected Miscellaneous Petition is closed.

28.07.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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To

- 1.The VI Additional District Judge,
Madurai.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

vsd

Pre - Delivery Order made in
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