



CRP(MD)No.2619 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP(MD)No.2619 of 2022

N.Karthish

: Petitioner

Vs.

Nil

: Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to direct the Principal District Court, Ramanathapuram, to number the interlocutory application in SR.No.3056 of 2022 in unnumbered I.A.No. - of 2020 in S.O.P.No.7 of 2020 and to decide the same.

For Petitioner : Mr.D.Nallathambi

ORDER

The petitioner has filed a petition in S.O.P.No.7 of 2020 before the Principal District Court, Ramanathapuram, seeking succession certificate. The same was decreed by the learned Principal District Judge, Ramanathapuram, vide judgment and decree dated 08.12.2020. Thereafter, the petitioner has filed an interlocutory



application under Order 6 Rule 17 CPC to add his grandfather's name in the prayer of S.O.P.No.7 of 2020, stating that the same was erroneously left out. The said interlocutory application was returned on 30.11.2022 questioning as to how the petition is maintainable under Order 6 Rule 17 CPC when the main case itself was disposed as early as on 08.12.2020. Aggrieved over the same, the petitioner has moved the instant revision petition.

2.Learned counsel for the petitioner submitted that he has filed S.O.P.No.7 of 2020, based on a Will dated 26.01.1999 and the trial court has also ordered for the succession certificate by judgment and decree dated 08.12.2020. Even though he got a decree in his favour, he could not get the shares, without the name of the grandfather in the decree dated 08.12.2020. Therefore, he filed the interlocutory petition under Order 6 Rule 17 CPC to incorporate the grandfather's name in the main petition, however, the same was not entertained.

3.This Court considered the contention of the learned counsel for the petitioner and perused the materials placed on record.



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4.It appears that the trial court, based on the Will dated 26.01.1999, has already passed a decree granting succession certificate in S.O.P.No.7 of 2020. The grievance of the petitioner is that he failed to include his grandfather's name in the prayer in S.O.P.No.7 of 2020 and therefore, he filed the present interlocutory application for amending the prayer. The trial Court returned this application stating that the main original petition was already disposed of.

5.The Hon'ble Supreme Court in ***Peethani Suryanarayana v. Repaka Venkata Ramana Kishore***, reported in ***(2009) 11 SCC 308***, has held that the amendment in plaint is permissible even after the passing of the final decree. The relevant portion from the said decision is extracted as under:-

“10. The power of the court to allow such an application for amendment of the plaint is neither in doubt nor in dispute. Such a wide power on the part of the court is circumscribed by two factors viz. (i) the application must be bona fide; (ii) the same should not cause injustice to the other side; and (iii) it should not affect the right already accrued to the defendants.”



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6. In view of the above decision, this civil revision petition stands disposed of, with a direction to the trial court to number the interlocutory application and to decide the same, on its merits, by applying the ratio laid down in ***Peethani Suryanarayana's*** case (supra). There shall be no order as to costs.

Index : Yes / No
Internet : Yes
gk

12.01.2023

Note: Registry is to return the original plaint, after taking sufficient copies and after getting due acknowledgments.

To

The Principal District Judge,
Ramanathapuram.



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B.PUGALENDHI, J.

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