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C.R.P. No.2212 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

CRP.No.2212 of 2022

and CMP.No.11444 of 2022

1. Govindasamy S/o. Gopal

2. Munusami S/o. Gopal

...Petitioners / Defendants 1 & 2 / Petitioners

Vs.

R. Sundaramoorthy S/o. Kannan

..... Respondent

PRAYER: Civil Revision Petition is filed under section 227 of the Constitution of India, to set aside the fair and decreetal order dated 17.12.2021 made in I.A. No.1 of 2021 in O.S. No.118 of 2018 on the file of the District Munsif Court, Madurantagam.

For Petitioners : Ms. M. Vishali

For Respondent : No appearance.

ORDER

The Civil Revision Petition has been preferred as against the order passed in I.A. No.1 of 2021 in O.S. No.118 of 2018 on the file of District Munsif Court, Madurantagam dated 17.12.2021, wherein the petitioner herein has filed a petition before the Trial Court under Order VI Rule 17 of Code of



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Civil Procedure to amend the written statement as detailed in the petition schedule and the same was dismissed. Aggrieved by the said order, the present Civil Revision Petition has been filed.

2. According to the petitioners, they are the defendants in the main Suit, which has been filed by the respondent / Plaintiff for the relief of permanent injunction and for other relieves. The property originally belongs to one Kuttiappan and he had only share over the property and while he was alive, these petitioners being his brother's sons orally partitioned the property in the presence of Panchatdhars and thereby the said Kuttiappan relinquished his share. The Suit is not maintainable without seeking relief of declaration. The above said facts have been informed to the earlier counsel, but in the written statement, those averments have not been pleaded and omitted by the previous counsel. Therefore, the said pleadings have to be pleaded in the written statement by way of amending the written statement. But the Trial Court dismissed the petition. Therefore, the order passed by the Trial Court is liable to be set aside.

3. According to the respondent, the petitioners have already filed written statement and based on the pleadings, the Trial Court framed issues



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and also, the date of trial was fixed by the Trial Court. On the side of Plaintiff, he examined PW 1 and marked documents and the case is posted for cross examination of PW1. At this stage, the petitioners have filed this amendment petition. The proposed amendment will alter the nature of the case and the reasons stated by the petitioners in the affidavit are not acceptable. Previously, in the written statement, they admitted that the property belongs to Kuttiappan, but now they denied the ownership of Kuttiappan. Therefore, the said amendment will alter the nature and character of the case. Hence the revision petition is liable to be dismissed.

4. Before the Trial Court, no oral or documentary evidence has been adduced on either side. The Trial Court after hearing both sides, dismissed the petition. Aggrieved by the said order, the present Civil Revision Petition has been filed.

5. The learned counsel appearing for the petitioners would contend that the respondent has filed a Suit for the relief of permanent injunction and for costs. At the time of filing the written statement, the petitioners instructed their counsel to plead that the property is not belonged to Kuttiappan and he has only share over the property and after some time, the petitioners being the



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brother's sons had orally partitioned the said property and they are enjoying the property for more than 15 years and hence the Suit is not maintainable without seeking relief of declaration. The above said aspects have not been pleaded in the earlier written statement. Therefore, the said aspects have to be incorporated in the written statement by way of amendment. The above said amendment will no way affect the case of the parties. But the trial Court failed to consider the same and dismissed the petition.

6. No representation for the respondent. In spite of notice served on him, none appeared.

7. This Court heard petitioner's side and perused all the materials available on record.

8. The petitioners have filed a petition to amend the written statement. Already they took a plea in the earlier written statement that the property belongs to one Kuttiappan and now they preferred amendment petition that the property is not entirely belonged to Kuttiappan and he has only share over the property. The Trial Court, after elaborate discussion, dismissed the petition by holding that *the Suit is at judgment stage and the petitioners have*



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not stated valid reasons and the plea taken by the petitioners that they did not know the facts stated in the written statement are not acceptable and it is settled proposition of law that ignorance of fact is excusable and ignorance of law is not excusable and hence dismissed the petition.

9. Even according to the proposed amendment, the petitioners want to amend the written statement to the effect that earlier they pleaded that the property belonged to Kuttiappan and now they want to amend the said pleading that the property is not entirely belonged to the said Kuttiappan and he had only share over the property. If the petitioners can convince the Court by way of filing appropriate documents to show that the property is not belonged to Kuttiappan and he is having only share over the property, the Trial Court has to take into account that aspect, since there is already a plea that the property belongs to Kuttiappan for larger extent. Therefore, the proposed amendment is not essential to decide the case. Further the Suit is posted for judgment and thereby, it is not appropriate to allow the amendment petition. Further the Trial Court has to decide as to whether the petitioners have proved the fact that the property is belonged to Kuttiappan, if so based on the earlier pleadings, the Trial Court shall decide the case on merits and the extent to which the said Kuttiappan is entitled to in accordance with law.



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10. In view of the above discussion, this Court is of the opinion that there is no merit in this Civil Revision Petition and hence the same is liable to be dismissed.

11. Accordingly, the Civil Revision Petition is dismissed with said observations. No costs. Consequently, the connected miscellaneous petition is closed.

27.06.2024

Index : Yes/No
Speaking order/non-speaking order
mjs

To

The District Munsif Court, Madurantagam.



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P.DHANABAL, J.,

mjs

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