



C.R.P.(NPD).No.2425 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).No.2425 of 2021

and

C.M.P.No.18417 of 2021

Jeyachandiran

... Petitioner

VS

1.Rani

2.Saravanan

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the Fair and Decreetal order in I.A.No.426 of 2021 in O.S.No.486 of 2007 dated 23.09.2021 on the file of learned Additional District Munsif, Tindivanam.

For Petitioner : Mr.N.Suresh

For R1 : Mr.V.Regunathan



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For R2 : No Appearance

ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the amendment application filed by the petitioner/plaintiff.

2. The petitioner herein filed a suit seeking declaration of title and permanent injunction. The petitioner traced his title over the suit property under his father-Kanagasapabathy by claiming that he was the only son of said Kanagasapabathy. The 1st respondent herein filed a written statement denying the said allegation. It was the specific case of the 1st respondent that the father of the petitioner had other children.

3. Thereafter, the petitioner preferred the present application for amendment. Whereunder, he wants to add new averments in the plaint to the effect that his father Kanagasapabathy married one Sivagami and got a daughter-Devasundari through said Sivagami. After death of said Sivagami,



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he married one Kamalammal and got two daughters and one son including petitioner through her. Thereafter, the petitioner's father married one Jayalakshmi and got 6 children through her. The petitioner also wanted to add new averments as if, there was a oral family arrangement in the family and whereunder, the property was allotted to his share. The said amendment application was opposed by the 1st respondent herein by filing counter that inspite of specific stand in the written statement petitioner's father had other children, the petitioner failed to file the present amendment application before commencement of trial.

4. The Court below dismissed the amendment application on the ground that the petitioner was negligent in his failure to seek amendment before commencement of trial inspite of specific pleading in the written statement. Aggrieved by the same, the petitioner is before this Court.

5. The learned counsel appearing for the petitioner assails the order passed by the Court below mainly on the ground that proposed amendment is only in tune with the averments of the respondents in their written statement



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and the same will not change the cause of action or introduce a new case.

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6. The petitioner came to the Court by asserting that he was only son of his father. The 1st respondent filed the written statement as early as on 11.08.2008 specifically stating that petitioner got other siblings. In spite of the specific stand, the petitioner has not taken any steps to amend pleadings setting forth real facts. The trial in the suit commenced on 07.03.2014 and petitioner examined three witnesses and his evidence was closed on 12.01.2016. Thereafter, the defendants' side evidence commenced on 22.01.2016 and the same was closed on 22.03.2021 after examining two witnesses. At the time of DW.1 was on box, the petitioner filed one application for impleading in I.A.No.222 of 2016 and 2nd defendant was newly impleaded and plaint was amended after impleading.

7. After impleadment and consequential amendment of the plaint, DW.2 was examined and evidence of defendants' side was closed on 22.03.2021 and the matter was posted for arguments on 26.03.2021. At this stage, the present amendment application has been filed to amend the plaint



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so as to introduce averment regarding the availability of other siblings and alleged oral partition in the family allotting the suit property in favour of the petitioner.

8. First of all, the petitioner has not given any reason for his failure to seek necessary amendment in pre-trial stage, when 1st defendant had taken up a definite stand regarding availability of siblings of the petitioner in her written statement on 11.08.2008 itself. There is no averment in the affidavit filed in support of the amendment application to enable the Court to come to a conclusion that inspite of exercise of due diligence, petitioner was prevented from seeking amendment at pre-trial stage. Therefore, the mandatory requirement under proviso to Order 6 Rule 17 of the Civil Procedure Code is not complied.

9. The petitioner herein seeking declaration of his title over the suit property. Now, a new plea has been introduced by the petitioner, as if, there was a oral partition in the family and the siblings of the petitioner agreed to allot the suit property in favour of the petitioner. Such a new plea, after



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commencement of trial will necessitate retrial of the case. Therefore, when the petitioner is not able to show that inspite of exercise of due diligence, he is not able to seek amendment before commencement of trial, the Court below rightly dismissed the amendment application as proviso to Order 6 Rule 17 of the Civil Procedure Code is not complied.

10. Accordingly, the order passed by the Court below calls for no interference and the Civil Revision Petition stands dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

05.02.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm



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To

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The Additional District Munsif,
Tindivanam.



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S.SOUNTHAR, J.

dm

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