



C.R.P. (PD) .No. 4354 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.10.2024

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THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No. 4354 of 2024

&

C.M.P.No. 24244 of 2024

N.Kandasamy

...Petitioner

Vs.

Lakshmi (Died)

1.Baskaran

2.Ranjith Kumar

3.Gopinath

4.Manokaran

5.Mani Bharathi

...Respondents



C.R.P. (PD) .No. 4354 of 2024

Prayer: Petition is filed under Article 227 of the Constitution of India against the order dated 26.04.2024 passed in I.A.No.11 of 2024 in O.S.No.586 of 2017 on the file of the I Additional Subordinate Court, Erode.

For Petitioner : Ms. Azhagammai
for Mr. T.Senthil Kumar

ORDER

The learned Trial Judge by virtue of the impugned order in I.A.No.11 of 2024 dated 26.04.2024 has granted leave to receive additional written statement. The plaintiff, aggrieved over the same, has presented the present revision.

2. O.S.No.586 of 2017 is a suit for partition and separate possession. The defendants 2 and 5 are the brothers of the plaintiff. The 7th defendant is the sister of the plaintiff. Claiming that their father Nagarathinam had died intestate, the suit for partition came to be



presented.

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3. According to the plaintiff, from and out of the joint family funds and from the plaintiff's earning, the suit properties had been purchased. Nagarathinam passed away on 15.08.2016. According to the plaintiff, Nagarathinam became senile three years prior to his death. The defendants 2 and 5 evaded partition of the properties constraining the plaintiff to present the suit. Pending the suit, the other legal representatives of Nagarathinam, namely, his wife also passed on.

4. The defendants entered appearance and filed a written statement denying the claim of the plaintiff.

5. Subsequently, the matter was listed for Trial and the plaintiff filed his evidence in chief on 17.10.2023. When it was posted for cross examination on 21.12.2023, the defendants took out an application under Order VIII Rule 9 of the Code of Civil Procedure. They pleaded that a year prior to his death, Nagarathinam had executed a “WILL”



bequeathing the property in favour of defendants 2 and 5. Hence, they wanted the Trial Court to receive their additional written statement.

6. The learned Trial Judge after receiving a counter from the plaintiff allowed the said application. Aggrieved by the same, the present revision by the plaintiff.

7. Heard Ms.Azhagammai for the civil revision petitioner.

8. Ms.Azhagammai pleads that the defendants had not taken a plea of “WILL” in the original written statement and they are introducing the same by way of an additional written statement. She further adds that copy of the “WILL” has also not been annexed with the written statement. Therefore, her client is prejudiced and hence, the order requires to be revived.

9. I have carefully considered the arguments of Ms.Azhagammai and gone through the records.



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10. The suit is one for partition. The defendants are attempting to project a “WILL” to defeat the claim of the plaintiff. The additional written statement is sought to be introduced even before they have subjected the plaintiff to cross examination. The bar as found under Order VI Rule 7 of the Code of Civil Procedure is not found under Order VIII Rule 9 of the Code of Civil Procedure.

11. Under Order VIII Rule 9, the Court only grants “*leave to party to file additional pleadings*”. In this case, *when the suit is still at the stage of Trial and when no right has accrued to the plaintiff*, no prejudice will be caused to the plaintiff by permitting the defendant to file an additional written statement and project the document. On the contrary, if the defendants are prevented from presenting the said additional written statement during the course of the Trial, they will be barred from producing the “WILL”. This is because, where there will be no pleadings and hence, no amount of evidence can be looked into.



The prejudice that has been caused to the plaintiff has been off set by the Court by imposing the cost prior to allowing the application.

12. In any event, the grant of leave is a discretion exercised by the learned Trial Judge. Unless and until the leave has been improperly exercised, it should not be normally interfered with by the Court in exercise of its revisional powers. In any event, the plaintiff anticipating this plea of the defendant, has taken a plea that Nagarathinam was senile three years prior to his death. Therefore, it is always open to the plaintiff to file a reply statement to the written statement projected by the defendants and get the benefit of decree in the suit, if it is so open to him.

13. I find no reasons to interfere with the order passed by the learned Trial Judge. Accordingly, the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

28.10.2024

Index : Yes/No
Internet : Yes/No
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C.R.P. (PD) .No. 4354 of 2027

To
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The I Additional Subordinate Court,
Erode.



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C.R.P. (PD) .No. 4354 of 2024

V.LAKSHMINARAYANAN, J.

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C.R.P. (PD) .No. 4354 of 2024

28.10.2024