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C.R.P.No.1815 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.1815 of 2017 and

C.M.P.No.8674 of 2017

Tamilnullai

... Petitioner

Vs.

1.Pratap

2.Taluk Supply Officer
Sirkali Taluk,
Nagapattinam District.

3.The Tahsildar
Sirkali Taluk,
Nagapattinam District.

4.The District Collector
Collectorate Office
Nagapattinam District.

5.The Accountant General,
Office of the Accountant General,
361, Anna Salai,
Teynampet,
Chennai-600 018.

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order passed in I.A.No.301 of



C.R.P.No.1815 of 2017

2017 in O.S.No.234 of 2008 dated 05.04.2017 on the file of the District
Munsif, Sirkali.

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For Petitioner	: M/s.S.Hariharan for M/s.P.Srividhya
For Respondent 1	: Served-No appearance
For respondents 2 to 4	: Mr.V.Jeeva Giridharan Additional Government Pleader
For respondent 5	: served-no appearance.

ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court dismissing the application filed by the petitioner seeking amendment of the plaint.

2. The petitioner herein filed a suit for injunction restraining the respondents 2 to 5 from disbursing the death and other monetary benefits of petitioner's deceased daughter namely Purushgaya in favour of her husband, the 1st respondent herein.

3. It is the case of the petitioner that 1st respondent committed murder of her daughter and hence, disqualified from claiming monetary benefits payable by the employer on the death of daughter of petitioner.



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4. The trial in the suit is already commenced and the matter is posted for cross-examination of D.W.1. At this stage, the petitioner/plaintiff filed amendment application seeking amendment of the plaint so as to include a new plea that 1st respondent married another girl after death of petitioner's daughter and hence, disqualified from claiming any right over the estate of the deceased Purushgaya. The said amendment application was dismissed by the Trial Court on the ground that re-marriage by husband after death of 1st wife is not a disqualification for claiming any right in the estate of the deceased 1st wife.

5. It is seen from the records, the trial in the suit is already commenced and the suit is posted for cross-examination of D.W.1. In the affidavit filed in support of the amendment application, it is not stated by the petitioner as to why she failed to file amendment application prior to commencement of the trial. Therefore, newly added proviso under Order 6 Rule 17 of CPC is not complied with and on that simple ground, the amendment petition is liable to be dismissed.



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6. The petitioner wants to amend the plaint only to raise a new plea that 1st respondent married another girl after death of petitioner's daughter Purushgaya and hence, he is disqualified from claiming right over the estate of his deceased first wife. I don't think there is any provision in Hindu Succession Act disqualifying husband from claiming share in the estate of his deceased wife, only on the ground of his re-marriage. In any event, the said point is pure question of law and petitioner is entitled to raise it at the time of argument, if it is permissible in law.

7. With these clarifications, the Civil Revision Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

12.03.2024

Index : Yes / No
Internet : Yes / No
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To

The learned District Munsif, Sirkali.



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S.SOUNTHAR, J.

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