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C.R.P.(MD)No.191 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 25/03/2024

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The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P(MD)No.191 of 2024

and

CMP(MD)No.827 of 2024

Diravida Selvan : Petitioner/ Petitioner/
Plaintiff

Vs.

Tamilselvi : Respondent/Respondent/
Defendant

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the order made in IA No.2 of 2023 in OS No.105 of 2017 on the file of the District Munsif Court, Pattukkottai, Thanjavur District, dated 30/11/2023.

For Petitioner : Mr.S.Deenadhayalan

For Respondent : Mr.A.Sivasubramanian

O R D E R

This civil revision petition has been filed seeking to set aside the order passed, dated 30/11/2023 in IA No.2 of 2023 in OS No.105 of 2017 by the District Munsif Court, Pattukkottai, Thanjavur District.



2. The facts in brief:-

The suit in OS No.105 of 2017 was taken out by this petitioner seeking the relief of declaration that the suit property belongs to him, by virtue of Will, dated 05/10/2009, for consequential injunction and for costs. The defendant entered appearance and filed the written statement. During further process, a petition was taken out in IA No.2 of 2023 by this petitioner seeking amendment of plaint. That was dismissed by the trial court.

3. Against which, this civil revision petition is preferred.

4. The facts narrated by the petitioner in the petition is that the main suit is filed for declaration by virtue of the Will, dated 05/10/2009. The defendant entered appearance and filed written statement stating that the Will, dated 05/10/2009 is not a genuine one. More-over, the right of the executor namely Valli Ammai is also disputed stating that Valli Ammai has no right over the suit property. In the event, the trial court comes to the conclusion that the Will, dated 05/10/2009 is not valid under law, seeking alternative relief of partition, he filed this petition.



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5.That was resisted by the respondent stating that originally, a petition was filed by the petitioner in IA No.1 of 2022 to withdraw the suit. That was dismissed. She filed a memo stating that she wants to file an appeal. Without taking further action in that matter, now the present petition is filed seeking amendment. Examination of the witnesses are over. Now the suit is posted for argument. At this stage, this petition is filed with a delay.

6.Heard both sides.

7.As mentioned in the preamble portion of the order, the original suit is one for declaration and for permanent injunction. The basis for the issue is Will, dated 05/10/2020 executed by Valli Ammai. At the conclusion of the trial process, this amendment petition is taken out by the petitioner to include the alternative prayer to say that in the event of the trial court comes to the conclusion that the plaintiff is not entitled for the suit property or in the alternative of preliminary decree for partition, the half share must be passed. This, according to the petitioner, does not amount to change the character of the suit or the basis of the suit. Even the delay on his part to seek the alternative



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prayer will not cause any prejudice to the respondent.

The trial court ought to have allowed that petition.

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8.Per contra, it is the contention on the part of the respondent that the amendment petition cannot be entertained at the fag end of the trial process. He would rely upon the judgment of the Hon'ble Supreme Court in ***Basavaraj Vs. Indira and others (Civil Appeal No.2886 of 2012, dated 29/02/2024)***.

9.No doubt that amendment of pleadings at the fag end of the trial process should not be encouraged or permitted also. There is a huge delay on the part of the petitioner also in taking out the amendment petition. But the amendment now sought to be introduced by the petitioner is not going to affect the interest of the respondent. Even in the absence of the pleadings with regard to the alternative prayer, in the absence of proof of the disputed Will, according to the petitioner, he is entitled for half share in the properties. So, this according to him, will not cause any prejudice to the respondent's case.

10.In all the cases of amendment, the basic for consideration is whether there will be any prejudice to



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the other party. This is one of the criteria. The trial court says that the petition is not filed in time, there is a delay.

11. But as stated above, the alternative prayer is not going to change the character of the suit and further witness are not required on both sides on this aspect, In the event of the petitioner is denied the alternative prayer, then he has to take another suit, which may cause multiplication of litigation between the parties. All the issues between the parties must be decided in the very same suit itself.

12. Another objection raised by the respondent is that the petitioner filed IA No.1 of 2022 seeking permission of the court to withdraw the suit with liberty to file a fresh suit on the very same cause of action. But it was dismissed by the trial court with liberty to him to file amendment petition, if required. But that order copy is not available before this court. This is also the additional factor, which is available to the benefit of the petitioner. Since, as mentioned above, all the issues must be decided in the same suit.

13. On that sole ground, the impugned order passed by the trial court is set aside and accordingly, it is set aside.



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14.In the result, these civil revision petition stands **allowed**. The order made in IA No.2 of 2023 in OS No.105 of 2017 on the file of the District Munsif Court, Pattukkottai, Thanjavur District, dated 30/11/2023 is set aside. Cost of Rs.5,000/- (Rupees Five Thousand only) must be paid by the petitioner to the respondent within a period of 15 days from the date of receipt of a copy of this order. The memo to that effect to be produced before the trial court. After carrying out the amendment, the respondent herein is at liberty to file the additional written statement. The parties should be permitted to lead evidence, if so opted. Considering the oldness of the matter, there shall be a direction to the trial court to follow the circular issued by this Court in R.O.C.No. 984/2015/RG/B5, dated 25.02.2016 wherein this Court directed the trial Courts to expedite the trial process in the matters pending for more than 5 years. No costs. Consequently, connected Miscellaneous Petition is closed.

25/03/2024

Index:Yes/No
Internet:Yes/No
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To,

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- 1.The District Munsif,
Pattukottai,
Thanjavur District.
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN, J

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