



C.R.P.PD(MD)No.444 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P.PD(MD)No.444 of 2020

&

C.M.P(MD)No.2640 of 2020

1.M.Rajendran(died)

2.M.Thavamani

3.R.Valliyammal

4.R.Prema

5.R.Tamilmani

6.R.Elangovan

7.S.Vasuki

(petitioners 3 to 7 are brought on
record as the Lrs of the deceased
1st petitioner vide Court order
dated 14.12.2022 made in CMP(MD).No.
11719 of 2022)

... Petitioners

Vs.

1. Mookammal

2.R. Shanmugavel



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3.R.Thangapandi

4.R. Subramanian

5.R.Saravanan

6.R.Manickam

7.R.Ramar

8.M. Thirukkanna Thevar

9.M.Kandasamy Thevar(deceased)

10.R. Radha

11.R. Akilan

12.R. Arunan

13.M. Veerakumar,

14.S. Vilvalingam,

15.T. Balakrishnan,

16.Muthulakshmi

17.Shanmugam,

18.Anbalagan

19.Panchavarnam

20.Shanthi

21.Ramalakshmi

22.The Tahsildar,

Kadaladi Taluk, Kadaladi, Ramanathapuram District.

23.Zonal Deputy Tahsildar,

Kadaladi Taluk, Kadaladi, Ramanathapuram District.



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24.The Sub Registrar
Sayalgudi Sub- Registrar Office, Sayalgudi,
Kadaladi Taluk, Ramanathapuram District.

25.Alagammal
26.Gulasekarapandian
27.Malaichamy
28.Thirukkumaran
29.Thirukkannan
30.Murugesan
31.Panchavarnam
32.Ramakrishnan
33.Murugesan
34.Indira Devi
35.Udhaya Soorijan
36.Velusamy

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 07.01.2020 made in I.A.No.91 of 2019 in O.S.No.48 of 2011 on the file of Additional District Judge, Paramakudi and to allow the Civil Revision Petition.

For Petitioners : Mr.P.Thiagarajan

For Respondents : Mr.PT.S.Narendra Vasan for R15

No appearance for R10 and 11



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ORDER

This Civil Revision Petition is directed against the order dated 07.01.2020 passed in I.A 91 of 2019 in O.S.No. 48 of 2011 on the file of the Additional District Judge, Paramakudi.

2. The said application was filed seeking amendment of the prayer in the suit by adding an alternative relief of declaration of title on the basis of adverse possession. The suit was originally filed, seeking declaration of title and now the same is sought to be amended for declaration of title on alternative ground of adverse possession. The said application was dismissed by the learned Trial court by going into the merits as to the entitlement of the petitioner to seek declaration of title basing on adverse possession in the context of original plea taken in the plaint, on which the declaration of title was sought for.

3. Learned counsel appearing for the respondents strenuously contended that there was no plea in support of the proposed relief of declaration of title based on adverse possession in the entire plaint and



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without there being any pleading and only in the prayer part of the suit plaint is sought to be amended, which is of no use. It is also further contented that the suit is of the year 2011 and the petitioner has sought declaration of title by claiming that the suit property originally belonged to their ancestors and also by seeking to set aside such registered documents executed by their ancestors and therefore he was not entitled to seek relief of declaration of title based on adverse possession.

4. All these aspects cannot be considered at this stage, as was done by the learned Trial Court, in the order under revision. All these matters are required to be considered while dealing with the issue of declaration based on the plea of adverse possession. Once the amendment is ordered the petitioners will have an opportunity of filing an additional written statement and whatever pleas that are available for the defendants they are entitled to take all such pleas. In the circumstances, the contention raised by the learned counsel for the respondent also required to be considered at the time of disposal of the suit.



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5. It is totally inappropriate on the part of the learned Trial Court to go into the merits of the case while dealing with an application filed under Or.6 R.17 of C.P.C. It is settled law that an application filed Or.6 R.17 should be considered liberally in order to avoid multiplicity of litigation etc. In the instant case, the Trial Court ought to have considered the said application liberally and ought to have allowed the said application.

6. In the light of the above and also in lieu of settled legal position that the application for amendment of pleading filed under Or.6 R.17 shall be considered liberally, this Court is of the view that the Trial Court ought to have allowed the amendment instead of going into the merits of the case to decide the entitlement of the petitioner for such relief basing on the plea of adverse possession.

7. In the light of the above, the order under revision is liable to set aside and the same is accordingly set aside. Accordingly, the application in I.A.No.91 of 2019 in O.S.No.48 of 2011 is ordered and the prayer in the suit shall stand amended in terms of I.A.No.91 of 2019. The respondents/



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defendants are at liberty to file their additional written statement within a period of four weeks from the date of receipt of a copy of this order.

8. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, connected Civil Miscellaneous petition is closed. Considering the fact that the suit is of the year 2011, the learned Trial Court is directed to dispose of the same as expeditiously as possible at any rate on or before 30.06.2024.

21.02.2024

Index : Yes/No
Internet : Yes
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MUMMINENI SUDHEER KUMAR, J.

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To

The Additional District Judge, Paramakudi

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