



C.R.P. (MD) No. 3282 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.04.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

C.R.P. (MD) No. 3282 of 2023
and
C.M.P. (MD) No. 16931 of 2023

Alagulakshmi

... Petitioner

-VS-

1.Usha
2.Jeevitha
3.Vinitha

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the entire records of the trial Court and set aside the fair and decreetal order dated 02.11.2022 passed in I.A. No. 123 of 2021 in O.S. No. 199 of 2017 by the Principal District Court, Dindigul.

For Petitioner : Mr. V.R.Venkatesan

For Respondents : No Appearance

ORDER

This Civil Revision Petition invoking Article 227 of the Constitution of India, 1950, has been filed against the order dated 02.11.2022 in I.A. No. 123 of 2021 in O.S. No. 199 of 2017 (hereinafter referred to as the 'impugned order' for short) passed by the Principal District Court, Dindigul (hereinafter referred



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WEB COTE to as the 'Trial Court' for short).

2. The parties are hereinafter referred to as by the description in the suit in O.S. No. 199 of 2017 before the Trial Court for the sake of clarity and convenience.

3. Heard Mr. V.R.Venkatesan, Learned Counsel of the Defendant and perused the materials placed on record, apart from the pleadings of the parties.

4. The suit in O.S. No. 119 of 2017 has been filed seeking for partition of the properties belonging to one Maraiah Naidu, which has devolved on the Plaintiffs and the Defendant. The Trial Court by the impugned order has permitted the Plaintiffs to amend the schedule in the plaint to include an extent of 340 Sq.ft., on the western side of the existing property. The pivotal attack on the impugned order by the Defendant is that the mandate in the proviso to Rule 17 of Order VI of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC' for short) that no application for amendment shall allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could have raised the matter before the commencement



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of trial, has not been satisfied in this case. It is borne out from the record that the application for amendment had been made only at the stage of cross-examination of P.W.1 contending that the omission mentioned in the said portion of the said property was on account of a typographic error. The relevant passages of the impugned order of the Trial Court is extracted below:-

8. It is settled preposition of law that after examination of witnesses if the amendment is allowed to be made, it will lead to fill up the lacuna. But in the instant of case, the suit is filed for partition, the defendant is also placed in the position of plaintiff and also if some of the properties are left out, definitely, it could conclude that properties. It is needless to say both the plaintiffs and defendant in same position. The proposed amendment is including the Western side of $\frac{1}{2}$ portion to an extent of 340 Sq.ft.

9. On careful perusal of plaint averments, the petitioners claiming $\frac{1}{2}$ share in the capacity of legal heir of her husband, who is the son of late Maraiah Naidu. The defendant is daughter of said Maraiah Naidu. It is averred that the suit property was purchased by her grand father of Maraiah Naidu named Pathinettampadi Naidu, from one Mariammal on 25.1.1927. Pathinettampadi had two sons, one Maria Naidu and another son died as un-married. The said Maraiah Naidu and his wife had one son named Kannan who is none other than the husband of the 1st petitioner and the 1st plaintiff herein.



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5. The Hon'ble Supreme Court of India while upholding the validity of the amendments made to the Code of Civil Procedure, 1908, in the decision in ***Salem Advocate Bar Association (II) -vs- Union of India***, [(2005) 6 SCC 344], has observed as follows:-

26. Order 6 Rule 17 of the Code deals with amendment of pleadings. By Amendment Act 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, such amendment could not have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial. There is no illegality in the provision.



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It would also be relevant to extract the passages from the decision of the Hon'ble Supreme Court of India in ***Sambhaji -vs- Gangabai*** [(2008) 17 SCC 117], which reads as follows:-

9. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.

10. The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

11. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in the Judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable.



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Justice is the goal of jurisprudence, processual, as much as substantive. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. A procedural law should not ordinarily be construed as mandatory; the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed.

12. Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.

Having due regard to the said principles, in the case of this nature, where close relatives are litigants, a liberal approach has to be adopted. As rightly highlighted by the Trial Court, in a suit for partition, the Plaintiffs as well as the Defendants would be the beneficiaries when all the properties available for partition between the parties are included in the same suit so as to avoid multiplicity of proceedings. Viewed from that perspective, the explanation of the Plaintiff for the delay in seeking amendment has been rightly accepted by the Trial Court.



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6. In any event, the Defendant has not been able to show as to how any prejudice has been caused to him by the impugned order at this pre-decree stage, especially when Section 105(1) and clause (1) of Rule 1-A of XLIII of the Code of Civil Procedure, 1908, read as follows:-

Section 105(1) of CPC

Other orders.—(1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

Rule 1-A(1) of Order XLIII of CPC

Right to challenge non-appealable orders in appeal against decrees.—(1) Where any order is made under this Code against a party and thereupon any judgment is pronounced against such party and a decree is drawn up, such party may, in an appeal against the decree, contend that such order should not have been made and the judgment should not have been pronounced.

7. At this juncture, reference must be made to the decision of the Hon'ble Supreme Court of India in the decision in *Shalini Shyam Shetty -vs- Rajendra Shankar Patil* [(2010) 8 SCC 329], in which the principles on the exercise of



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the supervisory jurisdiction of the High Court under Article 227 of the

Constitution has been formulated in the following words:-

- (a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by the High Court under these two articles is also different.
- (b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of superintendence on the High Courts under Article 227 and have been discussed above.
- (c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.



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- (d) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in ***Waryam Singh -vs- Amarnath*** (AIR 1954 SC 215) and the principles in ***Waryam Singh -vs- Amarnath*** (AIR 1954 SC 215) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.
- (e) According to the ratio in ***Waryam Singh -vs- Amarnath*** (AIR 1954 SC 215), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and courts subordinate to it, “within the bounds of their authority”.
- (f) In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.



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- (g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.
- (h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words, the jurisdiction has to be very sparingly exercised.
- (i) The High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in ***L. Chandra Kumar -vs- Union of India*** [(1997) 3 SCC 261] and therefore abridgment by a constitutional amendment is also very doubtful.



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- (j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.
- (k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised *suo motu*.
- (l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.
- (m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of



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the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

Having regard to the aforesaid legal position *viz-a-viz* the impugned order and the materials placed on record, there does not appear to be any infirmity warranting any interference in the exercise of the supervisory jurisdiction by this Court.

In the result, this Civil Revision Petition, which does not deserve to be entertained, is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

23.04.2024

Index : Yes/No
Internet : Yes/No
Ncc : Yes/No
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Note: Issue order copy by 24.06.2024.

To

1.The Principal District Court, Dindigul.

2.The Section Officer,

Vernacular Records Section,

Madurai Bench of Madras High Court,

Madurai.



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P.D. AUDIKESAVALU, J.

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