



C.R.P.(PD)(MD)No.826 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 14.03.2024

CORAM

THE HON'BLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P.(PD)(MD)No.826 of 2020
and C.M.P.(MD)No.5611 of 2020

Nondipidaran

... Petitioner

Vs.

1.Pappa
2.Lakshmi
3.Alagammal
4.Mokkapidaram
5.Pandiammal

... Respondents

PRAYER: Petition filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order dated 12.02.2020 made in I.A. No. 652 of 2019 in O.S. No.21 of 2015 on the file of the Vth Additional District Judge, Madurai.

For Petitioner : Mr.PT.S.Narendravasan

For Respondents : Mr.V.Nagendran for R1 & R2
No Appearance for R3 to R5



C.R.P.(PD)(MD)No.826 of 2020

ORDER

WEB COPY

This Civil Revision Petition is directed against an order dated 12.02.2020 passed in I.A.No.652 of 2019 in O.S.N0.21 of 2015 on the file of V Additional District Judge Madurai.

2. The said application was filed by the respondents 1 and 2 herein seeking amendment of the prayer portion of the plaint by adding an additional prayer declaring the registered Will dated 23.06.2000, vide document No.12/2000, as null and void. The said application was filed when the matter stand posted for arguments of both the parties after completion of the trial.

3. The learned trial Court, having taken note of the pleadings on either side and also the dispute raised about the competence of the executant of the said Will and also about the execution, felt that there are sufficient evidence available on record disputing the validity of the said Will and on coming to the conclusion that by permitting the amendment of the plaint, the matter can be adjudicated in a proper manner between the parties,



allowed the said application by duly imposing costs payable to the respective defendants. As contended by the learned counsel for the petitioner, the said costs was paid and accepted by the respective defendants.

4. The contention of the learned counsel for the petitioner is that in the very reply notice, got issued by the petitioner herein prior to institution of the suit itself, they have brought to the notice of the respondents / plaintiffs about the Will dated 23.06.2000 and the respondents/ plaintiffs also raised sufficient pleadings in the plaint itself, but they are not diligent to include the relevant prayer in the plaint, though they are fully aware of the defence of the petitioner herein. No doubt, there is a delay on the part of the respondents / plaintiffs in seeking amendment of the prayer. In fact, they ought to have included the said prayer at the time of very inception of the suit itself. But that itself will not disentitle the respondents / plaintiffs from seeking amendment of the prayer as sought for in the case on hand.

5. Be that as it may, from the perusal of the plaint and written statement, it is evident that the validity of the said Will, including the



competence of the person to execute the said Will dated 23.06.2000 etc., are very much in dispute and appropriate evidence has also been admittedly adduced by the parties. Necessarily, the trial Court while dispose of the suit has to record a finding with regard to the validity and also the nature of the said Will. Even in the absence of any such prayer also such a finding is necessarily has to be recorded by the trial Court. If such a relief is added, it would be answered by the learned trial Court, strictly by placing on the evidence already placed on record. As stated by the learned counsel for the respondents 1 and 2, it is only a simple amendment in the prayer and the plaintiffs are not intended to adduce any additional evidence or seeking reopening of the matter and they are ready to proceed with the matter by advancing argument.

6. Further the Hon'ble Supreme Court in the case of ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited*** reported in ***AIR 2022 Supreme Court 4256***, considered the aspect of amendment of Order 6 Rule 17 of C.P.C. and the conclusions were recorded at paragraph 70 and sub-paragraphs (x) and (xi) of paragraph 70, which are relevant reads as under:



“(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897) :(AIROnline 2022 Del 1797)”

7. In the light of the conclusions of the Hon'ble Supreme Court extracted above and in the light of the facts and circumstances of the case as noted herein above, this Court does not find any error or illegality in the order passed by the learned trial Court and the same is well within the



C.R.P.(PD)(MD)No.826 of 2020

parameter of Order 6 Rule 17 of C.P.C. Accordingly, this Civil Revision
Petition is dismissed.

8. Taking into consideration the fact that the suit is of the year 2015 and the same was stayed by this Court for the past four years, the trial Court is directed to proceed with the hearing of the arguments on either side and dispose of the suit as expeditiously as possible at any rate on or before 30.06.2024. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

14.03.2024

NCC : Yes/No
Index : Yes/No

vsm



WEB COPY



C.R.P.(PD)(MD)No.826 of 2020

To

- 1.The Subordinate Court, Theni
- 2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



C.R.P.(PD)(MD)No.826 of 2020

MUMMINENI SUDHEER KUMAR, J.

vsm

C.R.P.(PD)(MD)No.826 of 2020



WEB COPY



C.R.P.(PD)(MD)No.826 of 2020

14.03.2024