



C.R.P.(MD)No.1699 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved : 28/03/2024

Date of Pronounced : 12/06/2024

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

C.R.P (MD) No.1699 of 2023

Sethuraman : Petitioner/Petitioner/
Plaintiff

Vs.

M.G.Seenivasa Konar (Died)
Amirthalakshmi (Died)

1.S.Gopalakrishnan @ Kannan
Saraswathi (Died)

2.Thulasiyammal @ Jothi

M.G.Rengaraj (Died)

3.Chandrasekar
4.R.Elumalai
5.G.Kalaiselvi
6.Saraswathi
7.Yasodha
8.Anandal
9.Leelavathi

: Respondents/R3,R5, 7 to 13/
Defendants 3,5,7 and 13

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to call for the records in Fair and Decreetal order, dated 24/03/2022 passed in IA No.11 of 2021 in OS No.85 of 2008 by the II Additional District Judge, Tiruchirappalli and set aside the same and pass such further or other orders.



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For Petitioner : Mr.Sethuraman
(Party-in-person)
For R1 and R5 : Mr.K.S.Kathiravan
For R3, R4, R6 to R9 : Mr.S.Manikandan
For 2nd Respondent : No appearance

O R D E R

This civil revision petition is filed seeking to set aside the fair and decreetal order, dated 24/03/2022 passed in IA No.11 of 2021 in OS No.85 of 2008 by the II Additional District Judge, Tiruchirappalli.

2.The facts in brief:-

Suit in O.S No.85 of 2008 is filed by the plaintiff as party-in-person seeking the relief of partition and separate possession of his 1/3rd share. The defendants appeared, filed the written statement and trial started. During the course of trial process, some of the parties expired and their legal heirs were brought on record. In the course of the proceedings, IA No.11 of 2021 under Order 6 Rule 17 CPC to amend the plaint is filed. That was dismissed by the trial court.

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



4.Heard both sides.

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5.Originally in 2014, petitioner filed in IA No.392 of 2014 under Order 6 Rule 17 CPC praying amendment of the plaint in respect of the very same subject matter. In that petition, he has stated that the suit item No.1, C schedule No.1 and 'F' schedule properties were included in the suit on the ground that the properties originally belongs to Jayarama Konar, who is the brother of the first defendant. The first defendant is the father of the plaintiff/petitioner. Jeyarama Konar died without any issues. In those circumstances, he included some properties in the plaint. At the time of the death of the first defendant, he received some documents in respect of the suit properties. Jayarama Konar later executed a settlement deed, dated 26/04/1965 in favour of his wife namely Muthulakshmi. Muthulakshmi executed a Will on 03/06/1985. But she was not aware of the settlement deed as well as the Will. But she was in possession and enjoyment of the property. After the death of Muthulakshmi, the Will came into effect. So the properties are not allotted in partition and those properties must be deleted.



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6.That was resisted by the 3rd respondent in that matter namely S.Gopalakrishnan @ Kannan stating that no such settlement was executed by Jayarama Konar, so also Will, dated 26/04/1965 by Muthulakshmi. In the copy of the plaint served upon him, only five schedules are mentioned as A to E. There is no 'F' schedule in the plaint. So, the question of deleting 'F' schedule does not arise. Item No.1 'C' schedule was purchased by Srinivasan through registered sale deed, dated 28/04/1988 from Jayarama Konar. Later, he sold the property to third respondent's wife. Similarly, the 4th item in 'C' schedule was also sold at that time, during the life time of Jayarama Konar.

7.After hearing the parties, the trial court dismissed the petition on the ground that there is no 'F' schedule property in the plaint and the validity of the said settlement and Will are to be determined in the suit.

8.Now the second petition is filed in respect of the very same properties, which he want to include the same, but with alternative prayer with the following averments:-



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"In respect of the properties settled by Jayakumar Konar in favour of Muthulakshmi Ammal, she executed a Will, dated 03/04/1985 to the plaintiff. So he become the owner of the properties. So the plaint must be altered for declaration of those properties."

9.That was resisted by the third respondent stating that it is a belated attempt on the part of the petitioner. Apart from that, other denials are also made.

10.The trial court after elaborate consideration dismissed the petition observing that by way of amendment, the petitioner wants to change the character of the suit; contradictory to the plaint averments; also observed that the petitioner is continuously filing the interlocutory applications for stalling the trial process. By observing so, the petition was dismissed.

11.The petitioner, by relying upon the following judgments viz., (1)Om Prakash Gupta Vs. Ranbir B.Goyal (AIR 2002 SUPREME COURT 665); (2)Ragu Thilak D.John Vs. S.Rayappan and others (AIR 2001 SUPREME COURT 699); and (3)Unreported judgment of this court made in CRP(MD)No. 2049 of 2021, dated 01/06/2023 (M.V.Sundaram Vs. M.s.Sethuraman and others) would submit that the



amendment now sought if denied, serious prejudice will be caused to him. According to him, no prejudice will be caused to the respondents if amendments are allowed and he is also ready to substantiate his pleadings during the course of trial. So according to him, his right must not be curtailed.

12.No doubt that the plaint can be amended, but for valid reasons and it must be also in the nature of aiding the issues to be decided between the parties. But taking contradictory stand should not be permitted.

13.As stated above, IA No.392 of 2014 was filed even without understanding the plaint pleadings. What are the properties covered in the settlement deed executed by Jayarama Konar and what are the properties bequeathed in his favour by Muthulakshmi are not clearly mentioned in the amended plaint.

14.Now we will see the proposed amendment.

15.As per the order of the trial court, the particulars mentioned in the proposed amendment in Item Nos.1, 2, 3 and 4 were already allowed. He wanted to replace the entire para No.13 in the original plaint.



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16.Let me extract para 13 in the original plaint:-

"(13).The first defendant applied the funds of Jothylakshmi and Co., and purchased properties in the name of the plaintiff and third defendant. The properties purchased are door Nos.45 and 46, East Pudur, Trichirappalli. Door No.45 was purchased from the legal heirs of one Sundarrajulu Naidi A Dhal Mill has been constructed. Plaintiff was engaged in erection of Dhal Mill and commission of the same. He has been running the Dhal Mill. Door No.46 was purchased from one Rajathy. If really it were the exclusive business of the plaintiff, no properties would have been purchased by him in the name of himself and his brother. It was so purchased only because first defendant as Kartha purchased these items of properties applying the funds from their business in the names of plaintiff and third defendant."



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16. Reading of this para shows that the case of the plaintiff is that the first defendant applied funds of Jothylakshmi and Co., to purchase the property in the name of the third defendant and the plaintiff. It is with reference to the properties in Door Nos.45 and 46, East Pudur, Trichirappalli. The plaintiff was running the Dhal Mill. Door No.46 was purchased from one Rajathy. So also he tries to say that the first defendant as Kartha of the family purchased these two items door Nos.45 and 46 out of the income derived from the business in the name of the plaintiff and the third defendant.

17. Now let us go to the present proposed amendment.
The proposed amendment reads as under:-

"13(A). Since both the properties bearing Door No.45 & 46 were bought by this plaintiff out of the funds from Jothilakshi & Co and are in possession of this plaintiff right from the date of purchase. It's to be treated as an absolute property of this plaintiff with the 3rd defendant as a benami which is allowed under law."



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18. So the proposed amendment runs quite contra to the original plaint averments in para 13. Now he wants to say that the third defendant is only benamidhar. But the property belongs to him. So this sort of amendment cannot be permitted which goes against the clear admission made by the petitioner in the original plaint. So, this portion of the amendment cannot be permitted and rightly held so by the trial court, which requires no interference.

19. In the concluding portion, he has mentioned that he is entitled for partition of his $1/3^{\text{rd}}$ share. Now in the proposed amendment, he wants to say that he is entitled for $1/2$ share in the suit property, whether he is entitled for $1/2^{\text{th}}$ or $1/3^{\text{rd}}$ share can be decided by the trial court at the time of final conclusion. In the absence of any factual changes in para No.13, the concluding portion should not be amended.

20. As mentioned above, the share which is entitled to the plaintiff can be decided on merits by the trial court. So this also requires no interference. The conclusion reached by the trial court with reference to the proposed amendment also requires no interference.



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21. Para No.13 that is now sought to be amended stating that he is entitled to half share. In the original plaint, he has stated that he is entitled to 1/3rd share. What applies to the decision in reference to para No.33 applies to this amendment also. This can also be decided at the time of trial. Consequently the prayer portion also requires no amendment since the trial court can decide the issue and allow the same.

22. Regarding the addition of prayer (A1) in the prayer portion, now he wants that No.1, 2, 3 in 'C' schedule along with 'E' and 'D' schedule items 1 to 4 are the absolute properties in view of the Will executed by Muthulakshi Ammal, on 03/04/1985. In the original plaint, he has stated that the house properties in 'C' schedule are joint family properties. Now he wants to amend it. In the original plaint, it has been mentioned 6 items in 'C' schedule. Now he says that items 1 to 3 in 'C' schedule is covered in the Will dated 03/04/1985. Similarly in 'E' schedule items 1 to 4 is covered in Will, dated 03/04/1985. In respect of this prayer, he already filed IA No.392 of 2014 to delete those items by mentioning as if they are shown as 'F' schedule. But in the original plaint, there was no 'F' schedule. So that application came to be dismissed.



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23. So from the perusal of the order passed by the trial court, it is seen that the petitioner indulged or engaged in filing application one after other dragging the matter endlessly. Similarly, repeated applications were filed seeking the very same amendment. But however, we find absolutely no reference to the Will dated 03/07/1984 in the original plaint, when the existence of the Will came to notice or knowledge are not stated. The suit is of the year 2007. Now we are in 2024. Even after a lapse of 17 years, still the matter is dragging on because of the frequent amendments.

24. Further reading of the order passed by the trial court shows that the quite contra to the averments made in the plaint, now he says that these items are bequeathed to him by the second defendant in his favour. It is quite contra to the IA No.294 of 2014 averments. That application was filed in 2014. The petitioner has not taken any steps. After a lapse of several years, the present petition came to be filed. Already order has been passed in CRP(MD)No.2049 of 2021 to expedite the trial and dispose of the same within a time stipulated.

25. The petitioner would submit that as per the judgment of the Hon'ble Supreme Court in Ragu Thilk



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D.John Vs. S.Rayappan (AIR 2001 SUPREME COURT 699), all the amendments, which are necessary and just for the decision of the case must be allowed. He is referring to the judgment of the Hon'ble Supreme Court in the case of Asian Hotels (North) Limited Vs. Alok Kumar Lodha and others [(2022)8 SCC 145].

26.No doubt that the amendments which are required for a just decision of the issue must be allowed. But here, the conduct of the petitioner does not inspire confidence. He is interested in dragging the matter endlessly and not the conclusion of the trial. So absolutely, I find no reason to interfere in the order passed by the trial court.

27.In the result, this civil revision petition is **dismissed**. No costs.

12/06/2024

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

1.The II Additional District Judge,
Trichy.

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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