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C.R.P. (PD) .No.5344 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.5344 of 2024
and C.M.P.No.29699 of 2024

B.Gomathi

.. Petitioner

Vs.

Venkatesan

.. Respondent

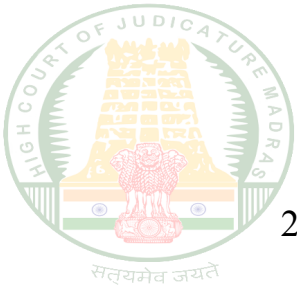
Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the impugned order dated 04.11.2024 passed in I.A.No.788 of 2023 in O.S.No.489 of 2021 passed by the learned Principal Subordinate Judge, Villupuram, and ordered to allow the application.

For Petitioner : Mr.T.K.Saravanan

For Respondent : Mr.S.Chandramouli

ORDER

This civil revision petition challenges the order passed by the learned Principal Subordinate Judge, Villupuram, in I.A.No.788 of 2023 in O.S.No.489 of 2021 dated 04.11.2024.



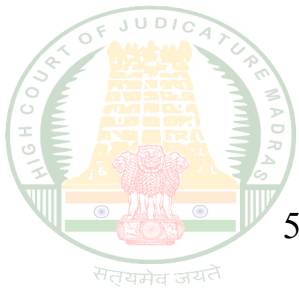
2.The civil revision petitioner is the plaintiff in the suit.

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3.She presented O.S.No.489 of 2021, seeking the relief of declaration of title and for permanent injunction. She traced her right to the property through a settlement deed that had been executed by her husband in her favour on 19.07.2021. She claimed that the property belonged to three brothers, namely

- (i)Murugesa Gounder,
- (ii)Varadharaj Gounder and
- (iii)Subramani Gounder.

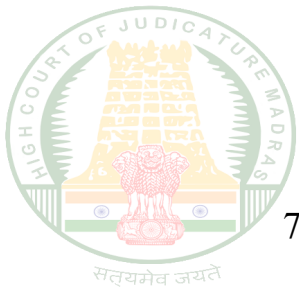
4.She added, prior to the brothers, the property was owned by one Pavadaisami Gounder and others. The said Pavadaisami Gounder had executed a sale deed in favour of Murugesa Gounder, first of the three brothers. Thereafter, by virtue of a partition deed entered into between the three brothers, on 17.02.1970 the suit property, denominated as “B” schedule mentioned property, was allotted to her father-in-law, namely Varadharaj Gounder.



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5.A written statement was presented by the defendant. The defendant pleaded that the suit property belonged to one Adhimoorthy Naicker and he had sold the property to Arumuga Gounder and Gopal Gounder on 09.02.1917. Arumuga Gounder and Gopal Gounder are grand father and father of the defendant. He pleaded on the death of Gopal Gounder, he succeeded to the estate as his legal heir. He further pleaded that the property was shown as “Niluvai” and that taking advantage of this classification, the plaintiff's husband transferred the “natham patta” in his name and soon thereafter, transferred the property in favour of the plaintiff.

6.After this written statement has been presented, the plaintiff filed an application for amendment. She pleaded that she applied for an encumbrance certificate, subsequent to the filing of the written statement, and came to know that the defendant had executed a sale deed in favour of one Pavadaisami Gounder on 26.12.1961. She added the said Pavadaisami Gounder had mortgaged the property in favour of one Vadamalai Gounder. She pleaded that as the defendant had already alienated the property in the year 1961, he is not entitled to make a claim over the suit property.



7.This application for amendment was received in I.A.No.788 of 2023.

This application was opposed by the defendant pleading that there is a change in cause of action. The defendant conceded that if the plaintiff wants to include the pleading on the prior sale, the appropriate remedy is to file a reply statement and not seek for an amendment. He further pointed, in case the plaintiff so desires, she can withdraw the suit and can file a fresh suit on the same cause of action with the leave of the Court.

8.The learned Principal Subordinate Judge, Villupuram, agreed with the defendant. He left it open to the plaintiff to file an application for reply statement and dismissed the amendment application. Hence, this revision.

9.When the matter came up for admission, I requested Mr.T.K.Saravanan to serve the papers on Mr.S.Chandramouli, the learned counsel who represents the defendant in the Court below. Notice has been taken and the matter is listed before me today.

10.I heard Mr.T.K.Saravanan and Mr.S.Chandramouli.



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11.The learned counsel reiterated their contentions that were placed before the Court below.

12.I have gone through the records and perused the impugned order dated 04.11.2024.

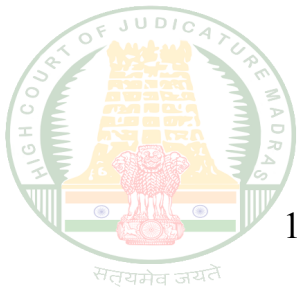
13.The suit is still at the pre-trial stage. It has been consistently declared by Supreme Court as well as by this Court that pre-trial amendments should be permitted liberally. See, ***B.K.Narayana Pillai Vs. Paraneswaran Pillai & another, (2000) 1 SCC 712***. The plea of the plaintiff is that there is a change in cause of action. By virtue of granting the relief, I feel that there is no change in cause of action. The suit continues to be one for title. The plaintiff is only adding to her existing plea on tracing of title. Her consistent case is that the property belongs to Varadharaj Gounder, her father in law. This plea has not been changed in the amendment application. She wants to add a pleading that the defendant had sold the property in favour of the predecessors in title of the plaintiff.



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14.This is obviously to obviate the defence that might be taken, at a later date, that no document relating to the alleged sale made by the defendant in favour of the predecessor of title of the plaintiff can be tendered unless and until there is a pleading to that effect. In fact, Order VI Rule 17 of the Civil Procedure Code is elastic enough to permit a party to trace a title to the property than originally pleaded. See, *Mahebubkhan Himmatkhan Vs. Mohamadkhan Lalkhan and others, AIR 1954 Nag 54* and *U Min Sin Vs. Ma Mon and others, AIR 1934 Rang 234*. This is because the suit is one for declaration of title and at a pre-trial stage, a party is entitled to correct the tracing of title to the property.

15.In this case, the plaintiff is not giving up her case that the property belonged to Varadharaj Gounder. She is only clarifying the position as regards how Varadharaj Gounder had got the title to the property. Since it is a pre-trial amendment and as there is no change in cause of action, but a mere clarification on the tracing of the title, I do not find any reason how the plaintiff should be denied the benefit of amendment.



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16.In the light of the above discussion, despite the vehement plea raised by Mr.S.Chandramouli, I am constrained to interfere with the impugned order.

17.The Civil Revision Petition is allowed. The order passed by the learned Principal Subordinate Judge, Villupuram, in I.A.No.788 of 2023 in O.S.No.489 of 2021 dated 04.11.2024 is set aside. The plaintiff is granted leave to amend the plaint. Needless to add that the defendant will be entitled to file a written statement to the amended plea. Consequently, the connected Miscellaneous Petition is closed. No costs.

23.01.2025

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

The Principal Subordinate Judge,
Villupuram.

V.LAKSHMINARAYANAN, J.



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