



C.R.P(MD)Nos.1655 & 1656 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 10.12.2024
DELIVERED ON : 06.01.2025

CORAM:

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P(MD)Nos.1655 & 1656 of 2022
and
C.M.P(MD)No.7249 of 2022

N.Sivabalan

... Petitioner
(In Both Cases)

Vs.

1.Beema Firdhouse

2.K.Dhandapani

... Respondents
(In Both Cases)

PRAYER in C.R.P(MD)No.1655 of 2022: Civil Revision Petition is filed under Article 227 of the Constitution of India, to pass an order setting aside the fair and decreetal order, dated 05.07.2022 passed in I.A.No.56 of 2022 in O.S.No.30 of 2011 by Additional Sub Court, Palani, thereby allowing the Civil Revision Petition.

PRAYER in C.R.P(MD)No.1656 of 2022: Civil Revision Petition is filed under Article 227 of the Constitution of India, to pass an order setting aside



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the fair and decreetal order, dated 05.07.2022 passed in I.A.No.120 of 2022 in O.S.No.30 of 2011 by Additional Sub Court, Palani, thereby allowing the Civil Revision Petition.

In Both Cases:

For Petitioner : Mr.S.Anand Chandrasekar
for M/s.Sarvabhman Associates

For R-1 : Mr.T.Lenin Kumar

For R-2 : No appearance

COMMON ORDER

These Civil Revision Petitions are preferred against the fair and decreetal order, dated 05.07.2022 passed in I.A.No.56 of 2022 and I.A.No. 120 of 2022 in O.S.No.30 of 2011 by the learned Additional Sub Judge, Palani.

2. The revision petitioner is the plaintiff in the suit in O.S.No.30 of 2011 and the above suit is filed for declaration and injunction. Pending suit, the petitioner / plaintiff made an application in I.A.No.56 of 2022 for filing reply statement and for recalling P.W.1 for re-examination. After the death



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of the petitioner's father, the revision petitioner's sister Velumani executed a Will in favour of the petitioner on 28.10.2021 in respect of the suit properties and other properties which event took place after filing of the suit. Hence, it has become necessary for the revision petitioner to state the above facts by way of filing reply statement and re-examining P.W.1 in this regard. The said application was resisted on the side of the respondents / defendants. In their counter affidavit it is stated that the suit properties belonged to the respondents / defendants and that it is false to state that the petitioner's sister executed a Will in his favour in respect of the suit property and that the petitioner has not stated about the alleged Will in the earlier application filed in I.A.No.498 of 2020 and therefore, it is evident that the Will is created for the purpose of the case. Hence, prayed for dismissing the above petition.

3. The Trial Court considering the above averments, dismissed the above two applications by stating that the above transaction took place after filing the suit and therefore, it is hit by *lis pendense* and the parties can adduce evidence in respect of the subsequent events. Therefore, it is not necessary to file a reply statement and to recall P.W.1 for further

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examination. Aggrieved by this, the present revision is preferred.

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4. The learned Counsel appearing for the revision petitioner would submit that in the above suit, P.W.1 and P.W.2 were examined. During the course of cross examination, a question was raised about the sister of the revision petitioner and since it is a suit for declaration of title and in order to cure the formal defect in the suit for not impleading the sister of the revision petitioner, the revision petitioner filed an application in I.A.No.498 of 2022 to implead his sister Velumani as third defendant in the suit. However, during the pendency of the said application, the sister of the revision petitioner died on 23.12.2021. Hence, the revision petitioner not pressed the said impleading application. The further contention of the revision petitioner is that prior to her death, the sister of the revision petitioner executed an un-registered Will on 28.10.2021 bequeathing her share in favour of the revision petitioner. Hence, the revision petitioner was constrained to file the above applications in I.A.No.56 of 2022 for receiving reply statement and I.A.No.120 of 2022 for recalling P.W.1 (i.e.,) the petitioner herein, to establish the above facts. However, the Trial Court without considering the necessity of the above applications, erroneously



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dismissed which calls for interference of this Court. He would further submit that the above application ought to be allowed by the Trial Court to decide the rights of the plaintiff and such permission ought to have been granted by the Trial Court by exercising its discretion judicially and properly in the interest of justice.

5. To support his contention, he has relied upon the decision / case reported in **1999 (1) CTC 458 [S.Murugesan and two Others Vs. S.Pethaperumal and two Others]**.

6. On the other hand, the learned Counsel appearing for the respondents / defendants would submit that the petitioner / plaintiff cannot be permitted to enlarge the scope of the original suit by incorporating the facts regarding the subsequent transactions. In the present suit, the execution of the alleged Will is a transaction covered by *lis pendense* and therefore, the Trial Court has rightly rejected the applications which calls for no interference by this Court.



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7. Heard the learned Counsel for the petitioner and the learned Counsel for the first respondent and perused the materials available on record.

8. Admittedly, the revision petitioner as plaintiff filed the above suit for declaration of title and injunction in respect of the suit property. It is the specific case of the revision petitioner in the above suit that after the death of his father, the revision petitioner became absolute owner of the suit properties and patta was also obtained in his name. Since the respondents / defendants in their written statement has mentioned about the petitioner's sister stating that she is also having right in the suit property and the petitioner was also cross examined by the respondents / defendants in this regard. Hence, the petitioner filed an application in I.A.No.498 of 2021 to implead his sister in the above suit. However, during pendency of the said application, the sister of the petitioner had died. The above petition was not pressed by the revision petitioner. Thereafter, the petitioner filed the above applications to receive the reply statement and to recall him to establish the fact that the sister of the revision petitioner executed a Will on 28.10.2021



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in respect of her share in favour of the revision petitioner. The Trial Court dismissed the said application by stating that since it is a subsequent event, the said transaction is hit by *lis pendense*. Since the revision petitioner claims that he has absolute right over the suit property and that his sister has executed a Will in his favour, it has become necessary to plea and depose by the revision petitioner to establish his absolute right in the suit property. By allowing the said applications, the multiplicity of proceedings can be avoided. Moreover, by allowing the above applications, it would not change the character of the suit. On the other hand, it would be helpful for the Court to resolve the dispute between the parties. Therefore, the Trial Court ought to have allowed the above applications. Moreover, no prejudice would be caused the respondents / defendants. Since the respondents / defendants have the opportunity to file additional written statement denying the averments made in the reply statement and also have the opportunity to cross-examine the witness in this regard. Therefore, the Trial Court ought to have allowed the said application.



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9. In the result, these Civil Revision Petitions stand allowed. The Trial

Court is directed to receive the reply statement and permit the petitioner to be examined further. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

06.01.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

The Additional Sub Court,
Palani.



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K.GOVINDARAJAN THILAKAVADI, J.

BTR

Order made in
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