

(2014) 11 MAD CK 0042

In the Madras High Court

Case No : C.R.P. (PD) No. 3653 of 2014 and M.P. No.1 of 2014

A. Faritha Begum

APPELLANT

Vs

L. Babu

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Citation : (2015) 1 MadWN(Civil) 113

Hon'ble Judges : K. Ravichandra Baabu, J.

Bench : Single Bench

Advocate : Umesh Rao, Advocate, for the Petitioner; P. Valliappan, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

K. Ravichandra Baabu, J.—This Civil Revision Petition is filed challenging the order made in I.A. No 366 of 2014 in O.S. No.44 of 2012, dated 11.6.2014, on the file of the District Munsif Court, Palacode, in rejecting the Amendment Petition filed by the Petitioner/Plaintiff.

2. The Petitioner is the Plaintiff in the said Suit. The Suit was filed by the Plaintiff seeking for declaration of her title to the Suit property and for Permanent Injunction restraining the Defendant from interfering with the peaceful possession of the Suit land by the Plaintiff. The Suit was filed by the Plaintiff by contending that it is a Village Natham land and about 36 years ago, she occupied the same and she is living in a small mud house. After filing the Written Statement by the Defendant, the Plaintiff filed the above said Amendment Application to include certain other facts regarding the oral gift made by her mother in respect of the Suit property and also to include the fact that the said property was self-acquired property of her mother by way of Sale Deed dated 3.2.1968 under Document No.203/1968. The said Application was resisted by the Defendant. The Trial Court dismissed the Application by saying that the proposed amendment sought for by the Plaintiff is contradicting the earlier plea taken by her in the original Plaint.

3. Heard the learned Counsel appearing on either side and perused the materials placed before this Court.

4. It is contended by the learned Counsel appearing for the Petitioner that the plea raised by the Plaintiff by way of amendment is not contradicting the earlier plea with regard to the possession of the Suit property for the past 36 years and on the other hand, the plea earlier raised was sought to be further explained by introducing the new facts, which are not contradictory in nature.

5. Per contra, learned Counsel appearing for the Respondent submitted that when the Plaintiff has taken a stand that the Suit property is a Natham Land and sire is in occupation for the past 36 years, sire cannot be permitted to amend the said Plaint averment by introducing new facts that her mother got the said property under Sale Deed dated 3.2.1968 and also gifted the same to the Plaintiff. Therefore, it is contended by the learned Counsel for the Respondent that, such plea sought to be introduced is self-contradictory.

6. I have gone through the pleadings of the respective parties and also the amendment sought to be introduced. In my view, there is no contradiction of basis facts, namely, the Plaintiff is in possession and enjoyment of the Suit property for the past 36 years and sire seeks declaration of her title to the said property. It was originally contended by the Plaintiff that it is a Natham land and her mother, who in turn gifted the same to the Plaintiff. Whether such statement is factually correct or not is a matter to be adjudicated at the time of trial, therefore, merely by allowing the amendment, it cannot be construed that such claim made by the Plaintiff is accepted by the Court. Moreover, in this case, such amendment sought, to be introduced is at a pre-trial stage.

7. Therefore, considering the fact that the parties are closely related as sister and brother, I am of the view that, in order to give a comprehensive healing of the actual dispute between the parties, the amendment sought for should have been allowed by the Trial Court. Therefore, I find that the Petitioner is entitled to succeed in this Civil Revision Petition. Accordingly, this Civil Revision Petition is allowed. The Petitioner is directed to carry out the amendment within a period of two weeks from the date of receipt of a copy of this order. After such amendment being carried out, it is open to the Respondent/Defendant to file additional Written Statement within a period of four weeks thereafter on such completion of pleadings, the Trial Court is directed to dispose of the same on merits and in accordance with law within a period of four months thereafter. No costs. M.P. Nod of 2014 is closed.