

IN THE COURT OF THE DISTRICT MUNSIF, PONNERI.

PRESENT: Selvi. **R.M. Subathra**, B.A.B.L(Hons.), M.L.(IPR).,
District Munsif, Ponneri.

Friday, the 5th day of July, 2019

I.A.1/2019
in
O.S.No.32/2014

1. S. Palani
2. S. Krishnamurthy
3. Chandra
4. Ramani

...Petitioners/Plaintiffs

-Vs-

1. R. Emarose Ammal
2. E. Umamaheswari
3. R. Ashok Kumar

...Respondents/Defendants

This petition having been finally heard on 24.06.019 in the presence of Mr. R. Krishnaswamy, learned counsel for the petitioners/plaintiffs and Mr. P.V. Murlidhar, learned counsel for respondents/defendants and upon hearing the arguments of both sides and after perusal of the entire records and having stood over for my consideration till this day, this court delivers the following:

ORDER

This is a petition filed under Order VI Rule 17 of Civil Procedure code seeking to permitting the petitioners/plaintiffs to amend the plaint.

2. The averments set out in the petitions affidavit filed by the petitioner are as follows:

The petitioner is the plaintiff in the suit filed for the relief of declaration of right and

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title to the suit property and for consequential relief of injunction. When filing the suit certain important documents relating to suit property namely Will dated 05.02.1968 executed by one Vaduvambal, the paternal grand mother of the 1st petitioner/plaintiff, in favour of her son Swaminatha Mudaliar and daughter Sulochanammal was not within the knowledge of the petitioners and they only knew about the same very recently. Hence, the petition to amend the plaint.

3. The averments set out in the counter filed by the 1st respondent and adopted by the other respondents are as follows:

When the matter was posted in the list, the present petition for amendment introducing new fact totally different from the earlier plaint pleadings has been filed. The introduction of the Will has no evidential value or would to strengthen the case of the petitioner/plaintiff. The testator Vaduvambal was bequeathed only 20 cents, by her sister Bakkiammal, and by the present Will she has no right to execute 40 cents. The present petition cannot be entertained as the same would not improve the case.

4. Now the point for consideration is whether the petitioners are entitled to get the relief as prayed for?

5. On both sides no oral and documentary evidence was let in.

6. Heard both sides. Perused the records. The learned counsel for the petitioners would contend that, it is only a pre-trial application and after allowing the application, the respondent/defendant could question the same by filing written statement and also during trial. The learned counsel for the respondent/defendant would contend that the suit had been filed only based on the principle of adverse possession and the Will has not been produced by introduction of the present petition, the petitioners are intending to change the entire cause of action and prayed for dismissal.

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7. It is seen that as per the plaint averments, the petitioners had stated that they have been in long open peaceful, continuous possession and enjoyment of the suit property, adverse to the interest of the respondent/defendant thus having prescribed right and title by principle of adverse possession.

8. Written statement filed in the year 2014 and the suit was posted to list after which the present petition came to be filed. The petition is silent regarding the date on which the petitioners came to know about the will.

9. It is seen that the petitioner/plaintiff had originally laid the suit on the ground of adverse possession. Now the present petition seeks to introduce new case as if a Will had been registered on 05.02.1968 and based upon the will, the petitioners have acquired title over the suit property. When initially the case of the petitioners is based on adverse possession, the present petition seeking to amend the plaint as if the petitioners have acquired title based on the will, is clearly introduction to new and different facts. Further it is seen that the petitioner has not sought to delete the already existing averments in the plaint. Further, in no way prejudice would be caused to the respondent in allowing this petition. Further, this court is of the view that the petition not being a post trial petition, the respondent/defendant could be given a chance to defend the case by way of filing additional written statement. This would further avoid multiplicity of proceedings. Hence, the petition allowed.

In the result, this petition is allowed. No costs.

Order directly dictated to Steno-Typist, typed by him, corrected and pronounced by me in the Open Court on this, the 5th day of July 2019.

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Ponneri.**

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List of witnesses on the side of the petitioners

NIL

List of documents on the side of the Petitioners

NIL

List of witnesses on the side of the respondents

NIL

List of documents on the side of the respondents

NIL

**DM,
PNI.**

Fair/ Draft Order
I.A.No.1/2019
O.S.No.32/2014
Date:05.07.2019
DMC,PNI.

District Munsif,

