



C.R.P.(MD) Nos.1614, 1616 and 1626 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	04.08.2023
Pronounced on	21.12.2023

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) Nos.1614, 1616 and 1626 of 2023

and

C.M.P.(MD) Nos.7898, 7901, 7998 of 2023

- | | |
|-----------------------|---|
| 1.Kaniraj | ... Petitioner in C.R.P.(MD)No.1614 of 2023 |
| 2. Devathiravia Nadar | ...Petitioner in C.R.P (MD)No.1616 of 2023 |
| 3. Dhanasekar | ...Petitioner in C.R.P (MD)No.1616 of 2023 |
| 4. V.TamilSelvi | Petitioner in C.R.P (MD)No.1626 of 2023 |

Versus

1. John Vesly
2. Canon Trust its Administrative Officer
John Vesly,
S/o.Rajapahadur,
5/122, Pudukottai Main Road,
Thoothukudi Taluk
Thoothukudi District
J.Sunder Singh (died)
S/o.Late K.S.Jeyasingh,
Kootampuli Village,



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Thoothukudi Taluk
Thoothukudi District.

3. J.Kumar

4. J.Siva Subramani Rajan

J.Jeyarani(died)

5. S.Packia Seeli

6. J.S.Jane Silvia

7. J.S.Ajay Kumar

8. J.S.Sanjay

... Respondents in all C.R.Ps

Prayer in C.R.P.No.1614 of 2023: The Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the Fair and Decretal order dated 17.04.2023 passed in I.A.No.06 of 2021 in O.S.No.168 of 2015 on the file of the Principal District Munsif Court, Thoothukudi.

Prayer in C.R.P.No.1616 of 2023: The Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the Fair and Decretal order dated 17.04.2023 passed in I.A.No.06 of 2021 in O.S.No.172 of 2015 on the file of the Principal District Munsif Court, Thoothukudi.

Prayer in C.R.P.No.1626 of 2023: The Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the Fair and Decretal order dated 17.04.2023 passed in I.A.No.06 of 2021 in O.S.No.169 of 2015 on the file of the Principal District Munsif Court, Thoothukudi.



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For Petitioners (in all C.R.Ps.) : Mr.S.Muthumalai Raja
For Respondents (in all C.R.Ps.) :
For R1 : Mr.M.P.Senthil
For R2 to R8 : No Appearance

COMMON ORDER

These revisions are preferred as against the fair and decretal order dated 17.04.2023 passed in I.A.No.06 of 2021 in O.S.Nos.168 of 2015, 169 of 2015 & 172 of 2015 on the file of the Principal District Munsif Court, Thoothukudi.

Facts:-

2.The revision petitioners, as plaintiffs, filed the above three suits for the relief of declaration of title of the suit property and permanent injunction restraining the respondents/defendants from disturbing the petitioner's peaceful possession of the suit property.

3.According to the revision petitioners, the suit properties belong to them. While so, the respondents/defendants illegally trespassed in the suit



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property and attempted to cut the oak trees in the suit properties and therefore, they were constrained to file the above suits. During the pendency of the above suits, the revision petitioners filed I.A.No.6 of 2021 for amendment to include and additional relief to declare Ex.D.2 decree and Ex.D.4- Sale deed as null and void. The same was resisted on the side of the respondents/defendants. The trial Court dismissed the above applications by stating that it is time barred. Aggrieved by this, the present revision petitions are filed.

4.The contention of the revision petitioners in C.R.P.Nos.1614, 1616 & 1626 of 2013, who are the plaintiffs in O.S.Nos.168, 169 & 172 of 2015, is that the suit 1st scheduled property belong to one Irulan and one Mayan who executed sale deed in favour of one Jayasingh through registered sale deed in document No.472/1976. Thereafter, one Rayappa Nadar got the first schedule property from Jayasingh, through a registered sale deed, on 17.03.1999 and he was in possession and enjoyment of the property. Subsequently, one Singaramaniammal purchased the suit property from Rayappa Nadar, through a registered sale deed on 30.03.2001. The patta also



stood in her name and she was in possession and enjoyment of the property.

The 2nd schedule of the property originally belong to one K.S.Duraisingh, who got the property in a family partition and he executed a sale deed in favour of Singaramaniammal and by virtue of the sale deed dated 02.04.2001, she was in enjoyment of the property without encumbrance and also got the patta in her name. Thereafter, the revision petitioner/plaintiff purchased the suit 1st and 2nd item, from Singaramaniammal, through registered sale deed 19.07.2004 and the patta was also changed in the name of the revision petitioner. He had also paid the property tax for the said property on 01.04.2015. The 1st respondent/1st defendant, along with henchmen, trespassed in to the suit property and attempted to cut the Oak trees in the said property. Again 18.04.2015 the 1st respondent/1st defendant disturbed his possession. Hence, the revision petitioner/plaintiff preferred a police complaint on 19.04.2023. Since it was a civil dispute, the complaint was closed. Hence, the revision petitioners have filed the above suits in O.S.Nos.168, 169 & 172 of 2015 before the Principal District Munsif Court, Thoothukudi. The respondent/defendant also filed the written statement. According to the revision petitioners, in O.S.No.69 of 1999 Ex.D.1



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judgment was passed in favour of the 2nd defendant namely the Canon Trust.

Ex.D.2 is the decree in the above suit. The above documents were marked through the defendants at the time of trial in the present suit. On verification, it was found that the suit property in Ex.D.2 decree is one and the same as in the present suit. It was also found that Ex.D.2 decree was not in accordance with Ex.D.1 judgment passed in O.S.No.69 of 1999. The contention of the revision petitioners is that in Ex.D.1 judgment (O.S.No.69/99) in Paragraph No.9, It is stated as under:

"1ம் பிரதிவாதியின் சகோதரர் (K.S.துரைசிங்) இந்த கிரைய ஒப்பந்தத்தில் கையெழுத்து செய்யவில்லை. ஆனால் 1ம் பிரதிவாதிக்கு (K.S.துரைசிங் நாடார்) மேற்படி சொத்தைப் பொறுத்து கிரையம் செய்ய அனுமதி அளித்துள்ளதாக 1ம் பிரதிவாதி கூறியுள்ளாரே தவிர அவருடைய சகோதரர் அவ்வாறு கூறவில்லை. மேற்படி சகோதரரை இவ்வழக்கில் தரப்பினராக சேர்க்கவில்லை. எனவே, கிரைய ஒப்பந்தத்தில் கையெழுத்து செய்யாத 1ம் பிரதிவாதியின் சகோதரருடைய சொத்தை பொருத்து 1ம் பிரதிவாதி, வாதியிடம் (கானான் அரக்கட்டளை, சென்னை.) அதன் நிர்வாக டிரஸ்டி ரா.ஜான் வெஸ்லி மூலம்) கிரைய ஒப்பந்தம் செய்தது ஒரு முறையற்ற செயலாகும். எப்படி இருப்பினும் 1ம் பிரதிவாதியின் சொத்தை பொறுத்து 1ம் பிரதிவாதி, வாதிக்கு கிரையம் கொடுக்க கடமைப்பட்டவர் ஆகிறார். மொத்தம் உள்ள 74 செண்டுக்கு ரூ.2 லட்சத்திற்கு கிரைய ஒப்பந்தம் பேசப்பட்டுள்ளது. அவ்வாறு பார்க்கும்போது 1ம் பிரதிவாதிக்கு



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பாத்தியப்பட்ட சொத்து சுமார் 29 செண்டு மட்டுமே ஆகும். எனவே, வா.சா.ஆ.8ன் படி 1ம் பிரதிவாதியின் சகோதரருக்கு பாத்தியப்பட்டதாக கூறும் சர்வே எண்.281/3Bல் 26 செண்டை பொறுத்தும், 281/3Cல் 19 செண்டை பொறுத்தும் ஆக மொத்தம் 45 செண்டு 1ம் பிரதிவாதியின் சகோதரர் துரைசிங்கிற்கு பாத்தியப்பட்டதாக கூறப்பட்டுள்ளது. மொத்தம் உள்ள 74 செண்டில் 45 செண்டு போக மீதியுள்ள 29 செண்டு மட்டுமே 1ம் பிரதிவாதிக்கு பாத்தியப்பட்டது..... மேற்படி தீர்ப்புரை 10வது பத்தியில்..... முடிவில் 1ம் பிரதிவாதியானவர் அவரது சகோதரர் டாக்டர்.திரு.K.S.துரைசிங் அவர்களை அணுகி அவரிடம் பேசி இருவரும் தபசில் சொத்துகளை வாதிக்கு கிரையம் செய்து கொடுத்து, வாதியால் வைப்பீடு செய்திருக்கும் மீதி கிரைய தொகையை பெற்றுக்கொள்ள வேண்டுமென்று, தவறும் பட்சத்தில் 1ம் பிரதிவாதி அவருக்கு பாத்தியப்பட்ட தபசில் சொத்தை பொறுத்து இன்றிலிருந்து ஒரு மாத காலத்திற்குள் வாதிக்கு கிரைய பத்திரம் பதிவு செய்து கொடுக்க வேண்டுமென்றும்..... " என்றும் தீர்ப்புரை பிறப்பிக்கப்பட்டுள்ளது. ஆனால் தீர்ப்பாபணையில், 27.07.1998 தேதிய கிரைய ஒப்பந்தப்படி வாதியிடம் இருந்து பாக்கி கிரைய தொகை ரூ.1,00,000/- லட்சத்தை பிரதிவாதி பெற்றுக்கொண்டு தபசில் சொத்தை பொறுத்து 11.12.04 க்குள் கிரைய பத்திரம் எழுதி பதிவு செய்து வாதிக்கு 1வது பிரதிவாதி கொடுக்க வேண்டுமென்றும் தவறும் பட்சத்தில் வாதி நீதிமன்றம் மூலம் நடவடிக்கை எடுத்துக்கொள்ள வேண்டுமென்றும் உத்தவிடப்படுகிறது.



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5. In pursuant to the above decree, the plaintiff in O.S.No.69/99, namely the Cannon Trust and the 1st defendant in the above suit namely K.S.Jaysingh Nadar, conspired and without amending the above said decree the said K.S.Jayasingh Nadar executed a sale deed in respect of the entire suit property under Ex.D.4 in favour of the plaintiff -Cannon Trust. The learned counsel for the revision petitioners would submit that, the said K.S.Jayasingh Nadar and the Cannon Trust, by suppressing the defect in Ex.D.2 decree, without amending the decree, executed the sale deed by playing fraud. Therefore, the principle of "finality of litigation" cannot be pressed to the extent of such an absurdity, that it becomes an engine of fraud in the hands of dishonest litigants. A Judgment or decree obtained by playing fraud on the Court is a nullity and non est in the eyes of law. It can be challenged in any Court either superior or inferior and even in collateral proceedings. To support his contention he has relied upon the judgment reported in **(1994) 1 SCC 1**. Therefore, the said decree and the sale deed are not valid and therefore, it has necessitated the revision petitioners to file the applications to amend the plaint by including the relief to declare the above Ex.D.2 decree and Ex.D.4 sale deed as null and void. Hence, the revision



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petitioners filed the amendment petitions in I.A.No.6 of 2021 in the above suits. However, the trial Court, without considering the above facts, dismissed the above applications and therefore, the revision petitioners preferred the above revision petitions.

6.On the other hand, the learned counsel appearing for the respondent/defendant would contend that the revision petitioners have suppressed the material part of the judgment passed in O.S.No.69/99. In paragraph 7 of the judgment it is categorically stated as follows:

" இவ்வழக்கில் 1ம் பிரதிவாதி ///// ஆக விசாரிக்கப்பட்டுள்ளார். அவர் தனது சாட்சியத்தின் முதல் விசாரணையின் சர்வே எண்.281/2டி ல் உள்ள 34 செண்டு நிலமும், 281/3பி மற்றும் 281/3சி உள்ள நிலம் 40 செண்டு சேர்த்து ஆக மொத்தம் 74 செண்டு நிலத்தையும் விற்பதற்கு தானும் வாதியும் ஒரு கிரைய ஒப்பந்தம் செய்து கொண்டது உண்மை என்றும் தன்னுடைய இருதய அறுவை சிகிச்சைக்காக தன் சகோதரருக்கு பாத்தியப்பட்ட நிலத்தையும் விற்பதற்கு முதலில் அனுமதி கொடுத்தார் என்று கூறப்பட்டுள்ளார். எனவே, வாதியின் கூற்றை 1ம் பிரதிவாதி உறுதி செய்கிறார். ஆகையால் வாதியின் சகோதரருக்கு மேற்படி இரு சர்வே எண்களில் உள்ள சொத்துக்கள்



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பாத்தியப்பட்டவை என கண்டுள்ளதால் அவர் 1ம்
பிரதிவாதியிடம் அனுமதி கொடுத்திருந்த காரணத்தினால்
மேற்படி சொத்துக்களை பொறுத்து வாதிக்கு 1ம் பிரதிவாதி
கிரையம் எழுதி கொடுக்க கடமைப்பட்டவர்.

7. Therefore, in the judgment passed in O.S.No.69/1999 it is clearly stated that only with the consent of his brother Durai singh, the 1st defendant Jaya singh executed a sale agreement in favour of the plaintiff and therefore, the decree was also drafted in favour of the plaintiff in the above suit. The learned counsel appearing for the respondent further contended that though the said Durai singh filed a suit in O.S.No.104/1999 for declaration and permanent injunction, by denying the alleged sale agreement, the same was not pursued by him and the above suit was dismissed for default. The judgment and decree passed in O.S.No.104/1999 was filed as Exs.P.7 and P. 8 in O.S.No.69/1999 and the same was also reflected in the judgment passed in O.S.No.69/1999. Hence, the learned counsel would submit that Ex.D.2 decree passed in O.S.No.69/1999 is in accordance with the judgment passed in the above suit. His further contention is that the decree was drafted in two parts and in the 1st part it is stated that the 1st defendant should approach his



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brother K.S.Duraisingh for executing a sale deed in favour of the plaintiff and receive the balance sale consideration. In the 2nd part it is stated that if the brother of the 1st defendant failed to execute a sale deed in respect of his share, the 1st defendant shall execute a sale deed in respect of his share in the suit property in favour of the plaintiff within a period of one month. Failing which, the Court shall execute the sale deed in favour of the plaintiff. The learned counsel would submit that even if there is any discrepancy found in drafting of the decree, the remedy available to the revision petitioner is to amend the said decree, instead of seeking the relief to declare the above decree and sale deed as null and void. Moreover, a judgment passed by a superior Court cannot be challenged in a Court inferior to it. He would further contend that the said amendment is also time barred and the doctrine of relation back, i.e., relating back the amendment to the date when the suit was originally filed, is not applicable to the facts and circumstance of the present case, since there is no special or extraordinary circumstances in the instant case warranting application of doctrine of relation back whereby a legal right that had accrued in favour of the defendant should be taken away. If such amendment is permitted it would result in injustice to the defendant.



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When a time barred claim is introduced, it would divorce the valuable right accrued to the defendant and it would change the nature of the suit. To support his contention, he has relied upon the judgments reported in **(2016) 1 SCC 332; 2022 (6) CTC 485**. Hence, the above revision petitions are devoid of merits and are liable to be dismissed.

8. Heard on both sides. Records perused.

9. Now, it has to be considered whether such amendment can be permitted or not. The contention of the revision petitioners is that the decree passed in O.S.No.69/1999 is not in accordance with the judgment passed in the above suit. Therefore, the sale deed executed in pursuant to the above defective decree would not bind upon the revision petitioners herein. Hence, they filed the interlocutory applications to amend the plaint for including the relief to declare Ex.D.2 decree and Ex.D.4 sale deed as null and void. As per Order 6 Rule 17 CPC, the Court may, at any stage of the proceedings, allow either party to alter or amend the pleadings which may be necessary for the purpose of determining the real questions in controversy between the parties



provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the parties could not have raised the matter before the commencement of trial. Admittedly, in this case, the above applications for amendment has been filed by the revision petitioners at the time of further cross examination of D.W.1. The explanation given by the revision petitioners for filing the above petitions after commencement of trial is that only at the time of marking the above documents at the time of examination of D.W.1, the revision petitioners came to know about the said documents. This contention of the revision petitioners cannot be accepted for the reason that even in the written statement filed by the respondent on 01.12.2015 itself, his claim over the suit property is based upon the decree passed in O.S.No.69/1999. Therefore, on 01.12.2015 itself the suit in O.S.No.69/1999 was brought to the knowledge of the petitioners. Moreover, the trial Court had also framed necessary issues in this regard on 16.06.2016. Thereafter, P.W.1 was also examined. Therefore, the contention of the revision petitioners that they came to know about the judgment and decree passed in O.S.No.69/1999 only at the time of marking the above documents cannot be



accepted. Therefore, the cause of action to declare the decree in O.S.No. 69/1999 arose on 01.12.2015 itself when the written statement was filed by the respondents. Therefore, the trial Court, placing reliance on the judgment reported in **2008 (15) SCC 610** has rightly held that the application of amendment of plaint to add a new relief is time barred. Even if it is a defective decree, which is not in accordance with the judgment, the revision petitioners instead of seeking the relief to include the prayer to declare the decree and sale deed as null and void, ought to have taken steps to amend the decree. However, the revision petitioners failed to take steps to amend the decree in the trial Court and not even preferred any appeal against the decree passed by the trial Court. Even at the time of executing the decree, the revision petitioners failed to take steps to amend the decree. Hence, the trial Court has rightly held that the said applications are time barred. Therefore, there is no infirmity or perversity found in the impugned order.

10. Accordingly, the orders passed by the trial Court in I.A.No.06 of 2021 in O.S.Nos.168, 169 and 172 of 2015 is confirmed. In the result, the above Civil Revision Petitions are dismissed. No Costs.



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Consequently, connected miscellaneous petitions are closed.

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mac/vsn

Index:Yes/No

Speaking Order : Yes/No

To

The Principal District Munsif Court, Thoothukudi.



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K.GOVINDARAJAN THILAKAVADI,J.

mac/vsn

common order made in

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