

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.1199 of 2015

and

M.P. No.1 of 2015

1.Visalakshi

2.G.Senthilkumar

.. Petitioners/Defendants

Vs.

1.Uthayapriya

2.Vaishnavi Devi

.. Respondents/Plaintiffs

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 02.02.2015 made in I.A.No.19 of 2015 in O.S.No.178 of 2007 on the file of the III Additional District Court, Salem.

For Petitioners :Mr.R.Nandhakumar

For Respondents :Ms.D.Chitra Maragatham for

Mr.T.R.Rajaraman

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 02.02.2015 made in I.A.No.19 of 2015 in O.S.No.178 of 2007 on the file of the III Additional District Court, Salem.

2.The respondents herein as plaintiffs filed a suit in O.S.No.178 of 2007 for partition and separate possession of 1/3rd share in the suit property stating that the suit property belongs to the second plaintiff's grand father viz., Ganesamoorthy and he had two sons namely, Subramaniam and Senthil Kumar. The said Subramaniam died on 21.01.1998 leaving behind the plaintiffs and the first defendant as his legal heirs. The said Ganesamoorthy passed away on 04.06.2007. So the plaintiffs/respondents herein have filed the suit stating that they are entitled to 1/3rd share in the suit property.

3.The revision petitioners/defendants have filed a written statement stating that Ganesamoorthy died on 04.06.2007 and during his lifetime, he had executed a settlement deed on 06.01.2006 in favour of the second defendant. The first defendant, who is the mother of the second defendant had also executed a settlement deed on 28.08.2006 in favour of the second defendant. Further, it was stated that after the death of said Subramaniam, his wife, the first plaintiff/first respondent herein got second marriage and she lived with her second husband without any connection with

the defendants family. Hence, the first plaintiff is not entitled to any share in the suit property.

4.The trial Court after hearing both sides, dismissed the suit, against which, the plaintiffs have preferred an appeal in A.S.No.992 of 2009 before this Court. This Court by judgment dated 28.11.2014, granted leave to the parties to raise all their objections against the settlement deed, since its attestor was not examined and remanded the matter back to the trial Court. At that time, the respondents/plaintiffs filed an application in I.A.No.19 of 2015 for amending the plaint stating that the said Ganesamoorthy has no mental strength to execute the settlement deed and by taking advantage of the same, the second defendant had obtained the settlement deed in his favour. The trial Court after hearing both sides, allowed the application, against which, the present revision is preferred by the defendants.

5.Learned counsel for the revision petitioners/defendants submits that amendment sought for by the plaintiffs is barred by limitation. This Court had remanded the matter back to the trial Court only to decide the validity of the settlement deed and the

amendment sought for now is go beyond the scope of the remand. That factum was not considered by the trial Court. Therefore, he prayed for allowing the revision petition.

6. Resisting the same, learned counsel for the respondents/plaintiffs submits that the trial Court allowed the application by holding that amendment sought for by the plaintiffs has not changed the cause of action and nature of the suit has also not been changed. He further submits that after that application was allowed, amendment has been carried out, witnesses have been examined and now the suit is in part heard stage. So the amendment sought for is not barred by limitation. Therefore, he prayed for dismissal of the revision petition.

7. Considered the rival submissions made on both sides and perused the materials available on record.

8. The respondents herein as the plaintiffs filed a suit in O.S.No.178 of 2007 for partition and separate possession of 1/3rd share in the suit property against the defendants 1 and 2, who are mother-in-law and brother-in-law of the first plaintiff and grand mother and junior paternal uncle of the second plaintiff respectively.

9.The second revision petitioner/second defendant has raised a plea that he got the property by way of settlement deeds, which were executed by his father and mother on 06.01.2006 and 28.08.2006 respectively. So the second defendant is the absolute owner of the suit property. He further stated that after the death of his brother, the first plaintiff/first respondent got second marriage and hence, she is not entitled to any share in the suit property.

10.The trial Court dismissed the suit, against which, the plaintiffs/respondents herein have preferred an appeal in A.S.No.992 of 2009 before this Court and the same was allowed and the matter has been remanded back to the trial Court.

11.During pendency of the suit, the plaintiffs/respondents have come forward with an application in I.A.No.19 of 2015 for amending the plaint stating that even though there was no specific averment and prayer in the suit in respect of questioning the settlement deed, during examination of witnesses, genuineness of the settlement deed was questioned. Therefore, the amendment application has been filed and the same was allowed by the trial Court.

12.As per the plaint pleadings, taking advantage of the plaintiffs' situation, the defendants/revision petitioners are colluding together to alienate the entire suit property, including the share of the plaintiffs. It is clear that instead of giving share to the widow, this revision has been preferred by the defendants/revision petitioner.

13.As per the provisions under Order VI Rule 17 C.P.C., no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

14.In the case on hand, during examination of witnesses, settlement deed was questioned. Further, this Court by judgment dated 28.11.2014 held that the findings of the trial Court related to validity of the settlement deed on the basis of the attesting witness, who was not called for examination, are not valid in law, as per Section 68 of the Indian Evidence Act and remanded the matter back to the trial Court. During that time, the present amendment application was filed. Admittedly, father of the second defendant had

executed a settlement deed on 06.01.2006 and his mother had executed a settlement deed on 28.08.2006. The present application was filed in the year 2015 within 12 years. As already stated that this Court by judgment dated 28.11.2014 granted leave to the parties to raise their objections with regard to the settlement deed. Moreover, the above aspect was rightly considered by the trial Court in para-18 of its order. Under such circumstances, the amendment sought for is not barred by limitation. The trial Court has considered all the aspects in proper perspective manner and came to the correct conclusion. Therefore, the order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed. The civil revision petition deserves to be dismissed and it is hereby dismissed.

15. In the result, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

30.11.2015

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Index: Yes/No

Internet: Yes/No

R.MALA,J.

Kj

To

III Additional District Court, Salem.

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