



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2015

CORAM:

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

C.R.P. (MD) .No.420 of 2015 (PD)

and

M.P. (MD) .No.1 of 2015

V.Yesudhas

... Revision Petitioner

vs.

1.Thankaiyan

2.Edwin Shaji

3.Ambirajan

4.Sobhi

5.Aswin Shaji

(Minor represents by his mother

4th defendant)

6.Thangaraj

... Respondents

PRAYER: This Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 13.12.2013 passed in I.A.No.794 of 2013 in O.S.No.218 of 2008 on the file of the I Additional District Munsif, Kuzhithurai.

For Petitioner : Mr.R.Nandakumar

For R2,R4 & R5 : Mrs.Anandhavalli

ORDER

The plaintiff, who has filed the suit for specific performance, has filed the above revision challenging the dismissal of the amendment application under Order 6 Rule 17 of C.P.C.

2.The case of the plaintiff is that the first defendant had entered into an agreement with him to sell the suit property on 11.10.2001. Even before the suit can be filed, the first defendant had sold the property in favour of the second defendant. The second defendant had settled the property in favour of his wife and children. Thereafter, it is stated that the first defendant has sold the property in favour of the sixth defendant. Therefore, the plaintiff claims that the defendants 1, 2 and 6 are jointly colluding together and creating sham and nominal documents encumbering the suit property. Therefore, the plaintiff wants amend the plaint describing about the fraudulent transaction in the plaint, the same was contested by all the defendants. The learned Judge dismissed the application. Aggrieved by the same, the above revision has been filed.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The question that has to be decided in this revision is whether an application under Order 6 Rule 17 has to be allowed.



4. According to the learned counsel for the petitioner, the proposed amendment does not say new facts or new case. But it only emphasises the case of the petitioner. Further, it is contended that the sixth defendant filed his written statement and the first defendant filed his additional written statement only on 17.06.2013. Hence, the petitioner had to state the facts reiterating their contention. Admittedly, the suit is filed for specific performance for enforcing the agreement dated 11.10.2001 between the plaintiff and the first defendant. If any alienation made, the subsequent agreement by the first defendant is not binding on the plaintiff. In the event of success in the suit by the plaintiff, it is open to him to get the sale deed executed from the first defendant and the subsequent alienees have to join him in the re-conveyance. It is open to the plaintiff to get the sale deed executed through Court in the event of the alienees not co-operating. Whiles, any amendment describing fraudulent transaction etc., are unnecessary for the suit.

5. The trial Court while concurring with the same view also found that the plaintiff had been delaying the suit in every stage. No doubt, it is a suit filed by the plaintiff. Therefore, any delaying tactics that he may adopt would only postpone the result of the suit.

6. The learned counsel for the caveator also submitted that the trial had commenced and D.W.1 evidence is in progress. Therefore, the amendment also being post trial amendment, cannot be allowed.

7. In the result, the order of the trial Court is confirmed and there is no infirmity to interfere with the same. The civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

The I Additional District Munsif, Kuzhithurai.

+1cc to Mr.J.Anandha Valli, Advocate Sr.No.11200

ns

AA/20.03.2015/2p- 3c/

C.R.P. (MD) .No.420 of 2015 (PD)

and

M.P. (MD) .No.2 of 2015

09.03.2015