

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.12.2016

Coram

The Honourable MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD.No.4020 of 2014

and

M.P.No.1 of 2014

1. Perinbajothi
2. Padmavathy
3. D.Vasuki
4. K.Kalaiselvi
5. K.Kalaiarasi
6. K.Dhanalakshmi
7. K.Aruna
8. K.Latha
9. K.Vanaja
- 10.K.Rajmohankumar

... Petitioners

vs.

1. P.Munusamy
2. P.Chellamuthu
3. Lakshmi
4. Selvarani
5. K.Jayakumar
6. K.Senthilkumar
7. Esthar Rani
8. Lakshmi

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order dated 24.06.2014 in I.A.No.313 of 2013 in O.S.No.49 of 2010 passed by the learned Judge, Sub Court,

Sangakiri and consequently allow the amendment petition filed by the petitioner in I.A.No.313 of 2013 in O.S.No.49 of 2010.

For Petitioners : Mr.Kaviyanathan for
M/s.Nathan and Associates

For Respondents : Mr.C.Prabakaran for
M/s.Fair Associates

ORDER

The revision petition is directed against the order refusing to allow the application under Order VI Rule 17 C.P.C.

2. The suit has been filed for partition and separate possession of the suit property. However, the relief of declaration regarding the sale deed dated 23.05.1997 in respect of 'D' schedule property executed by the defendants 3 to 6 in favour of the eighth defendant, has not been sought for in the suit.

3. It is stated by the plaintiffs that even though it has been mentioned in paragraph 10 of the plaint, the said prayer has not been asked for. Further, it is stated that sons of late Ponnann @ Siddhan, after

their father's death, had made a oral partition in all the schedule properties and obtained patta in their names. In 'C' schedule property only one survey number has been mentioned as S.F.No.208/3D instead of adding other sub division S.F.Nos.208/3A, B,C,D and E. It is stated that the above said omission is done inadvertently and it was not deliberate. Therefore, the amendment is sought for by the plaintiffs.

4. The respondents/defendants resisted the same. claiming that 'D' schedule property is the exclusive property. The father of the plaintiff, namely, Ponnan died in the year 1971 whereas the 'D' schedule property was purchased after his death. It is also stated that the prayer for declaration is barred under Article 58 of the Limitation Act.

5. Considering the above facts, the learned Sub Judge, Sangakiri had dismissed the application in I.A.No.313 of 2013 in O.S.No.49 of 2010. Aggrieved by the same, the above Civil Revision has been filed.

6. The only point that has to be considered is as to whether the amendment as prayed for can be allowed.

7. The first amendment sought for is a declaration declaring that the sale deed dated 23.05.1997 with respect to 'D' schedule property executed by the defendants 3 to 6 in favour of the eighth defendant as null and void and not binding on the plaintiffs. The said relief is filed beyond the period of three years from the date of the sale and the same is barred under Article 58 of the Limitation Act.

8. The suit is filed on 25.05.2010 beyond three years of the sale deed dated 23.05.1997. The sale by D5 and D6 of their share in 'D' schedule property on 23.05.1997 in favour of D8 is also beyond the period of limitation. Hence, the prayer for declaration is rightly declined by the learned Subordinate Judge, Sangakiri. Secondly, the allegation of oral partition for all the schedule properties and patta obtained after the death of Ponnan is also beyond the period of limitation, as the said Ponnan died in the year 1971. Similarly, in 'C' schedule property, only one sub division has been mentioned however, the plaintiffs want to

alter the measurement of the suit property, with regard to other sub division numbers. It can also be seen that if the amendment is allowed, it will be introducing a new case and the defendants would be put to serious prejudice, which cannot be compensated by any terms. Unless, the plaintiffs had established that the proposed amendment is necessary for the purpose of proving the real dispute between the parties, the same need not be allowed and the same is also subject to limitation. Admittedly, the amendment sought for now is a post trial amendment and the same is not permissible.

9. The Courts also deprecate the practice of filing application for post trial amendments, the reason being that, lesser degree of prejudice will be caused in pre-trial amendment when compared to the post trial amendment. The plaintiffs, seeking amendment after the completion of the trial has not applied due diligence, to introduce new amendment at the pre-trial stage. Hence, the trial Court has rightly dismissed the application. Therefore, I do not find any infirmity in the order passed by the Court below and the revision deserves to be dismissed.

10. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

14.12.2016

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To

The Sub Court,
Sangakiri.

PUSHPA SATHYANARAYANA.J

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