

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **26.10.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.2766/2016

T.Tamilselvi : Petitioner
versus

1. Dhanapalan

2. Muralidharan

3. Sivasankaran

4. K.Poongodi

5. K.Muthukumar

6. K.Sivakumar : Respondents

PRAYER: Revision filed against the order dated 18.4.2016, in I.A.No.8/2014 in A.S.No.31/2013 on the file of the learned Subordinate Judge, Thiruvavarur.

For petitioner : Mr.R.Baskar

For respondent : Mr.S.Sounthar

ORDER

The suit filed by the petitioner for injunction was dismissed by the Trial Court. In the related appeal filed before the Subordinate Court, Thiruvavarur, the petitioner filed an application to amend the plaint. The application was dismissed by the Trial Court. The said order is under challenge in this civil revision petition.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

3. The petitioner filed the suit in O.S.No.24 of 2014 before the District Munsif, Nannilam, on the strength of the settlement deed dated 15 July 1987. The respondents in the written statement filed in the said suit contended that the settlement deed was cancelled by the Settlor by document dated 28 March 1988. The respondents therefore contended that the petitioner is not entitled to a decree of injunction. There was no attempt made by the petitioner to file an application for amendment of the plaint during the currency of the suit. The suit was ultimately dismissed by the Trial Court.

4. The petitioner challenged the Judgment and Decree dated 23 September 2013 in A.S.No.31 of 2013. Before the Appellate Court, the petitioner filed an application invoking Order 6 Rule 17 CPC, to amend the plaint.

5. The petitioner in the affidavit filed in support of the application, contended that even though it was a simple suit for injunction, Trial Court considered the question of title. The petitioner therefore wanted to amend the suit for the purpose of obtaining a decree of declaration.

6. The application was opposed by the respondents primarily on the ground that the prayer for declaration is barred by limitation.

7. The learned trial Judge found that the amendment was made 12 years after filing written statement by the respondents. The First Appellate Court was of the view that there were certain findings recorded by the Trial Court and the same cannot be avoided by filing an application for amendment.

8. The petitioner placed reliance on the settlement deed executed by his father on 15 July 1987. The respondent in the written statement filed on 13 July 2006, very clearly stated that the settlement deed dated 15 July 1987 was cancelled by the settlor by document dated 28 March 1988. Even thereafter, action was not taken by the petitioner to amend the plaint so as to seek a decree of declaration and recovery of possession.

9. It is true that while considering an application for amendment, Court is not expected to consider the merits of the matter. However, in the subject case, the written statement was filed as early as on 13 July 2006. The petitioner for reasons best known, failed to take any action to amend the plaint. Even now, the prayer is not to set aside the cancellation deed dated 28 March 1998. The substantial prayer is to declare her title and pass a consequential decree of recovery of possession. The Trial Court having found that the application was highly belated, rightly dismissed the prayer for amendment of the plaint. I do not find any error or illegality in the impugned order, warranting interference by exercising the revisional jurisdiction.

K.K.SASIDHARAN, J.

(tar)

10. In the upshot, I dismiss the civil revision petition. No costs. Consequently, C.M.P.No.14166 of 2016 is also dismissed. However, I make it clear that this order would not stand in the way of the Appellate Court from considering and deciding the issue raised by the petitioner that the Trial Court has virtually decided the title in a suit for injunction and that such adverse findings are required to be expunged, or to file an independent suit, in accordance with law.

26.10.2016

Index:Yes/no
tar

To
The Subordinate Judge, Thiruvavarur

C.R.P.(P.D.) No.2766/2016

