

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2017

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(PD)No.1104of 2017 &

C.M.P.No.5325 of 2017

M.P.Padmavathi

... Petitioner

v.

1.S.Sundaram

2.Gomathi

3.R.P.Sakthivel

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 01.02.2017 made in I.A.No.751 of 2016 in O.S.No.31 of 2011 on the file of Subordinate Judge, Dharampuram.

For Petitioner : Mr.M.R.Thangavel

ORDER

Challenging the fair and final order passed in I.A.No.751 of 2016 in O.S.No.31 of 2011 on the file of Subordinate Court, Dharampuram, the plaintiff has filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.31 of 2011 to set aside the sale deed dated 07.03.2008 executed by the first defendant as power agent in favour of the third defendant and for permanent injunction. The defendants filed their written statement and are contesting the suit.

3. After the commencement of the trial, the plaintiff took out an application in I.A.No.751 of 2016 under Order VI, Rule 10 of CPC to amend the plaint by incorporating the prayer for mandatory injunction directing the defendants to return the original sale deed dated 13.03.1995 and to return the blank promissory note. The application filed by the plaintiff was opposed by the defendants stating that the proposed amendment changes the character of the suit and also that the present application has been filed at a belated stage.

4. On a perusal of the cause of action and also the averments stated in the plaint, it could be seen that the cause of action for filing of the suit arises only on 07.03.2008, the date on which the sale deed was executed. That apart, the plaintiff has not averred anything in the plaint with regard to the sale deed dated 13.03.1995. In paragraph 5 of the plaint, the plaintiff has only stated that the plaintiff purchased the suit property as a garden land on 13.03.1995 under a sale deed executed by one Palaniathal.

5. Since the present application seeking for amendment has been filed after the commencement of the trial, the Trial Court has rightly rejected the application. That apart, the prayer sought for by the plaintiff in the proposed amendment is beyond the scope of the suit and it also changes the character of the suit. The plaintiff has not given any reason for not filing the application at the earliest point of time. When the suit was taken up for trial, the plaintiff has come forward with the present application seeking for amendment of the plaint. The Trial Court taking into consideration all these aspects, rightly dismissed the application.

6. In these circumstances, I do not find any error or irregularity in the order passed by the Trial Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.03.2017

Index : Yes/No

Rj

To

The Subordinate Judge,
Dharampuram.

M. DURAISWAMY,J.,

Rj

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