

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2017

CORAM:
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (PD) No.1413 of 2017
&
C.M.P.No.6548 of 2017

Chandramathi ... Petitioner/3rd Plaintiff

Vs.

1.Sivaloganathan

2.Sivabakkiam

... Respondents 1 & 2/
Defendants 1 & 2

3.SivaMugundane

4.Sivashanmugam

5.Sivaji

... Respondents 3 to 5/
Plaintiffs 1, 2 & 4

Prayer: Revision filed under Article 227 of the Constitution of India against the fair and decreetal order dated 14.02.2017 made in I.A.No.507 of 2016 in O.S.No.33 of 2011 on the file of the Principal Sub Court, Puducherry.

For Petitioner : M/s.Sarvabhauman Associates

ORDER

The petitioner herein is the third plaintiff. The respondents are defendants 1 and 2. The petitioner along with three others have filed the suit in O.S.No.33 of 2011 on the file of the Principal Sub Court, Pondicherry seeking for declaration to declare the donation deed dated 30.04.2010 executed by the first defendant in favour of the second defendant is not binding on the plaintiffs and thus null and void.

2.The 1st respondent filed written statement on 22.08.2011 and is contesting the suit. At the stage of trial, the petitioner and other plaintiffs have filed the Interlocutory Application in I.A.No.507 of 2016 for amendment of the plaint to incorporate the following reliefs in the plaint:

d) Declare that the plaintiffs are absolute owners of item II and Item III which are mentioned in the schedule of properties.

e) Grant a decree of permanent injunction against defendants, their agents or any one claiming through them from encumbering settling or alienating the suit properties in favour of any one and direct them to preserve the properties for the benefit and welfare of the plaintiffs.

3. According to the plaintiffs, the suit properties were purchased by the 1st respondent with funds raised by selling jewels and sridhana articles of late Dhanalakshmi, who was the mother of the petitioner.

4. The first respondent filed the written statement and denied the averments made by the petitioner and other plaintiffs. According to the first respondent, the suit property was purchased by him out of his own income and not from the amount contributed by the mother of the first plaintiff. Further, according to the 1st respondent, if the amendment petition is allowed, it will lead different cause of action since a new case has been introduced.

5. Learned Judge, considering the averments made in the affidavit and counter affidavit, dismissed the application by holding that the suit was filed in the year 2011 and when the suit is posted for trial, the petitioner and other plaintiffs filed this application for amendment.

6. Aggrieved against the order dated 14.02.2017 made in I.A.No.507 of 2016 in O.S.No.33 of 2011 on the file of the Principal Sub Court, Puducherry, the present Civil Revision Petition is filed.

7. Heard the learned counsel for the petitioner and perused the materials available on record.

8. The petitioner and other plaintiffs filed the application for amendment in the plaint at a belated stage. A reading of the prayer in the plaint as well as the amendment now sought for in the Interlocutory Application reveals that the relief sought for in the plaint and the relief sought for amendment in the Interlocutory Application are different and not inter-related. If the amendment is ordered, it will change the entire nature of the suit. Learned Judge has considered the materials placed on record and dismissed the application by giving valid reasoning.

9. In the circumstances, there is no error or infirmity in the impugned order passed by the trial Court and accordingly, the Civil Revision Petition is dismissed as devoid of merits.

10. Since the suit is pending from 2011, the Principal Sub Judge, Puducherry, is directed to dispose of the suit as expeditiously as possible, in any event, not later than 30th September, 2017. No costs. Consequently, connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Principal Sub Judge,
Puducherry.

+1cc to M/s. Sarvabhauman Associates, Advocate, S.R.No.23047

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RV(CO)
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