

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **25.01.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD.No.79 of 2014

and

M.P.No.1 of 2014

1. Anusuyamma
2. Gayathri
3. Sunitha
4. Shiva Shankar
5. C.K.Ravi Kumar
6. Sekar
7. Manjunath
8. Radha Krishnan
9. Vijaya Lakshmi
- 10.Shoba

.. Petitioners

vs

1. Srinivasa Reddy
2. Raju @ Rajesh
3. Minor Bhargavi
4. Vasudevan
5. Papamma
6. Shivanna
7. Minor Bhargavi
8. Minor Bhuvana Chandra
Minors rep.by their father
R6 and natural guardian
9. Krishnappa
- 10.V.Gopal
- 11.Srinivasan
- 12.Chandra Sekar
- 13.Ramesh Babu
- 14.Gowramma
- 15.M.Bhaskar

16.P.Nagaraj
17.B.V.Srikantha
18.T.Anand
19.M.N.Ravi Prasad
20.Muni Yellappa

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 09.12.2013 passed by the learned District Munsif cum Judicial Magistrate No.I, Hosur in I.A.No.254 of 2013 in O.S.No.47 of 2012.

For Petitioners : Mr.R.Jayaprakash

For Respondents : Mr.N.Manokaran
for R4

RR1 to 3 and 5 to 20
served - No appearance

ORDER

The plaintiffs are the revision petitioners. Aggrieved against the order dated 09.12.2013 passed by the learned District Munsif cum Judicial Magistrate No.I, Hosur in I.A.No.254 of 2013 in O.S.No.47 of 2012 in rejecting the application filed to amend the plaint, this civil revision petition has been filed.

2. The facts, in a nutshell, are as follows:

(i) The petitioners/plaintiffs filed the suit in O.S.No.47 of 2012 to declare their title over the suit properties, to direct the respondents/defendants to deliver possession and to declare the sale deeds as null and void. Pending suit, they also filed I.A.No.254 of 2013 under Order 6 Rule 17 of the Code of Civil Procedure seeking to amend the plaint.

(ii) The respondents/defendants opposed the said application by contending that the amendment sought for by the plaintiffs are all unnecessary to the present suit and that the very suit itself is not maintainable.

(iii) The fourth respondent herein filed a separate counter affidavit stating that the amendment Nos.3 and 4 sought for by the petitioners/plaintiffs to declare the decree and judgment passed in O.S.No.54 of 1974 and O.S.No.458 of 1990 by the District Munsif Court, Hosur are null and void, is barred by limitation. Further it is stated that the amendment alters the very nature of the suit. Accordingly, they prayed for the dismissal of the application.

(iv) The learned trial Judge, after hearing both sides, dismissed the application by holding that the plaintiffs cannot seek an amendment of the plaint based on the written statement filed by the defendants and that the plaintiffs have to establish their case on its own perspective.

(v) Challenging the same, the present revision is filed.

3. Heard the learned counsel for the petitioners and the learned counsel appearing for the fourth respondent. Despite notice being served on respondents 1 to 3 and 5 to 20, there is no representation on their behalf either in person or through the counsel.

4. The suit is originally filed for declaration of title, delivery of possession and to declare the sale deeds as null and void. The defendants have in their written statement had stated that the suit itself is not maintainable, the same being frivolous and vexatious. Now, the plaintiff has filed the amendment application to include the prayer to declare the judgment and decree passed by the District Munsif Court, Hosur in O.S.No.54 of 1974 and O.S.No.458 of 1990 are null and void and not binding on them. The reason given in the

affidavit is that they could get the knowledge of those judgment and decree only after the written statement was filed by the defendants. Thereafter, they had applied for certified copies of the same on 17.12.2012. Therefore, there is no delay calculating from the date of their knowledge.

5. The learned counsel appearing for the fourth respondent would oppose the same on the ground of limitation. It is stated that there is no necessity to add Chinna Krishna Setty in O.S.No.54 of 1974 as Sundarammal questioned the very right of Krishna Setty to attach her property for the debt of somebody and if the attachment goes, subsequent proceedings also will go. It was further stated by the fourth respondent that the other suit in O.S.No.458 of 1990 filed by Subba Reddy was dismissed as withdrawn. There is nothing to challenge the said decree. As the plaintiffs have no right to question the decree in O.S.No.54 of 1974 and the challenge to the same at this length of time is barred by limitation, the amendment cannot be allowed.

6. Notwithstanding the fact that wide power and unfettered discretion is conferred on the Courts to allow amendment of pleadings

to a party, it should also not refuse bona fide, legitimate, honest and necessary amendments.

7. In the case on hand, the suit is being one for declaration of title and the amendment is based on the averments made in the written statement, the same would be necessary for the determination of the real question in controversy. Though the amendments sought for is at the pre-trial stage, the discretion of the Court should not prejudice or cause injustice to the defendants. The question of limitation is one of the factors to be considered by the Court.

8. In view of the above, this Court is inclined to allow the amendment sought for by the revision petitioners/plaintiffs for the reason that it would avoid multiplicity of proceedings. However, for the delay and inconvenience caused to the opposite party, costs should be imposed. Considering the fact that the amendment is only pre-trial one, a sum of Rs.10,000/- is imposed as costs on the revision petitioner/plaintiffs to be paid to the respondents/defendants.

9. Accordingly, this Civil Revision Petition is **allowed**, setting aside the order dated 09.12.2013 passed by the learned District Munsif

cum Judicial Magistrate No.I, Hosur in I.A.No.254 of 2013 in O.S.No.47 of 2012, on condition that the revision petitioners/plaintiffs shall pay a sum of Rs.10,000/- [Rupees ten thousand only] to the respondents/defendants within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

25.01.2017

vj2

Index : Yes/No

Internet: Yes

To

The District Munsif cum
Judicial Magistrate No.I, Hosur

PUSHPA SATHYANARAYANA,J.,

vj2

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