

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (PD) No.2713 of 2012  
and M.P.No.1 of 2012

1.S.Azagumani  
2.Irulayee

.. Petitioners

vs

P.Natarajan

.. Respondent

Revision filed under Article 227 of Constitution of India against the order passed in I.A.No.16469 of 2011 in O.S.No.2263 of 2008 dated 27.3.2012 on the file of III Assistant City Civil Court, Chennai.

For Petitioners : Mr.G.Dilip Kumar

For Respondent : M/s.K.B.Arul

सत्यमेव जयते

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**ORDER**

This revision is directed against the order dated 27.03.2012 passed in I.A.No.16469 of 2011 in O.S.No.2263 of 2008 on the file of the III Assistant Judge, City Civil Court, Chennai, allowing the petition

filed under Order 6, Rule 17 C.P.C. The petitioners are defendants in the suit.

2. Originally, the plaintiff has filed the suit for declaration to declare that the sale deed dated 21.04.2006 executed by the first defendant in favour of the second defendant by virtue of Power of Attorney obtained from the plaintiff as sham and nominal and for permanent injunction.

3. Pending suit, the plaintiff has filed I.A.No.16469 of 2011 seeking to amend the plaint by incorporating the prayer *"for a declaration declaring the General Power of Attorney Dated 28.11.2005 (Document No.3991/2005, Sub-Registrar, Virugambakkam), being obtained from the Plaintiff by 1<sup>st</sup> Defendant by exerting force and coercion, as ab initio void and is not binding on the plaintiff."*

4. Resisting the petition, defendants have filed the counter stating that the plaintiff earlier filed application being I.A.No.10901 of 2010 for amendment of the prayer for declaration that the sale deed dated 21.04.2006 as null and void and void ab initio on the ground of fraud and misrepresentation. The said application was allowed by the

trial Court and the prayer was also amended. Thereafter, with an intention to drag on the trial proceedings and to avoid payment of court fees based on the check slip issued, the plaintiff has now filed amendment application for the second time by adding the relief of declaration in respect of power of attorney dated 28.11.2005. In fact, the general power of attorney was already cancelled by the plaintiff on 23.04.2006 subsequent to the execution of the sale deed executed by the first defendant. According to the defendants, the proposed amendment is barred by limitation.

5. Upon consideration of the rival submissions, the trial Court allowed the petition. Aggrieved by the same, the defendants have filed the present Civil Revision Petition.

6. I heard Mr.G.Dilip Kumar, learned counsel appearing for the petitioners and Mr.K.B.Arul, learned counsel appearing for the respondent and perused the materials available on record.

7. The learned counsel for the petitioners submitted that the trial court committed an error in not taking note that the amendment petition was filed only to avoid payment of adequate court fee in view

of issuance of check slip by the Registry of the City Civil Court. It is submitted that the trial Court allowed the amendment petition after the commencement of trial. He submitted that the proposed amendment is barred by limitation.

8. The learned counsel for the respondent submitted that since the declaratory relief sought in the plaint was found to be unclear, the plaintiff has earlier filed application to amend the prayer seeking declaration declaring that the sale deed dated 21.04.2006 as null and void and the same was allowed by this Court. Since the sale deed was executed on the strength of the power of attorney dated 28.11.2005, it is necessary to amend the prayer by seeking declaration that the power of attorney also as null and void. He submitted that the trial Court has rightly allowed the petition and no interference is warranted.

9. On a perusal of the original plaint, it is seen that the original prayer in the suit reads thus:

*"(i) for a declaration declaring that the false, fabricated and concocted sale deed executed by the 1<sup>st</sup> defendant in favour of the 2<sup>nd</sup> defendant dated 21.4.2006 (Doct.No.1206/Book-I SRO Ashok Nagar) by virtue of*

*the Power of Attorney obtained by force and coercion from the plaintiff, dated 28.11.2005 (Doc.No.3991/2005 SRO Virugambakkam) as sham and nominal and is not binding upon the Plaintiff and the suit property.*

*(ii) for a permanent injunction restraining the Defendants, their agents, assigns or anyone claiming through them, from further encumbering the suit property detrimental to the interest of the Plaintiff.*

*(iii) for costs of the above suit, and ....."*

10. Thereafter, the plaintiff has filed I.A.No.10901 of 2010 seeking to amend the prayer of the plaint and the same was allowed by the trial Court, thereby, the prayer by seeking declaration declaring that the power deed as null and void was deleted. The amended prayer for declaration reads thus:

*"For a declaration declaring the impugned sale deed dated 21.4.2006 (Doct.No.1206/2006 SRO Ashok Nagar) fabricated by the 1<sup>st</sup> defendant in favour of 2<sup>nd</sup> defendant respect of the plaint schedule property, as null and avoid and void ab initio on the ground of ground of fraud and misrepresentation."*



11. As stated above, subsequently, the plaintiff has filed I.A.No.16469 of 2011 seeking to include the prayer for declaration declaring that the power of attorney dated 28.11.2005 as null and void.

12. The prayer of the plaintiff was opposed by the defendants mainly on the ground that only to drag on the proceedings and to avoid payment of court fees, the plaintiff has filed the amendment petition. According to the defendants, the proposed amendment is time barred.

13. As rightly held by the trial Court, whether the general power of attorney dated 28.11.2005 was obtained by force and coercion can be decided only at the time of trial. It is seen that no inconsistent or new case has been introduced by the plaintiff. Further, the proposed amendment would not alter the original cause of action.

14. Prayer seeking for amendment can be denied only when the amendment is not necessary for the purpose of deciding the controversy between the parties.

15. In the instant case, the defendants stated that the general power of attorney deed dated 28.11.2005 was already cancelled by the plaintiff on 23.04.2006. When such plea was taken by the defendants, the plaintiff was right in taking out application to amend the prayer including for declaration declaring that the power of attorney as null and void. Because of the proposed amendment in the plaint and/or the proposed prayer, no prejudice would be caused to the defendants. On going through the pleadings, I find that in order to determine the real controversies between the plaintiff and the defendants, the proposed declaratory relief is necessary. If the defendants chose to file additional written statement, they can very well to file the same.

16. In the result:

(a) The Civil Revision Petition is dismissed, by setting aside the order in I.A.No.16469 of 2011 in O.S.No.2263 of 2008 dated 27.3.2012 on the file of learned III Assistant Judge, City Civil Court at Chennai;

(b) The plaintiff is directed to take steps to amend the plaint;

(c) Liberty is given to the defendants to file additional written statement within a period of two weeks from the date of receipt of a copy of this order;

(d) The trial Court is directed to dispose of the suit within a period of three months thereafter. Both parties are directed to cooperate the trial Court for early disposal of the suit. No costs. Consequently, M.P.No.1 of 2012 is closed.

Note: Issue order copy on 09.04.2018

**04.01.2017**

vs

Index : Yes/No  
Internet : Yes/No

To

The III Assistant Judge,  
City Civil Court,  
Chennai.

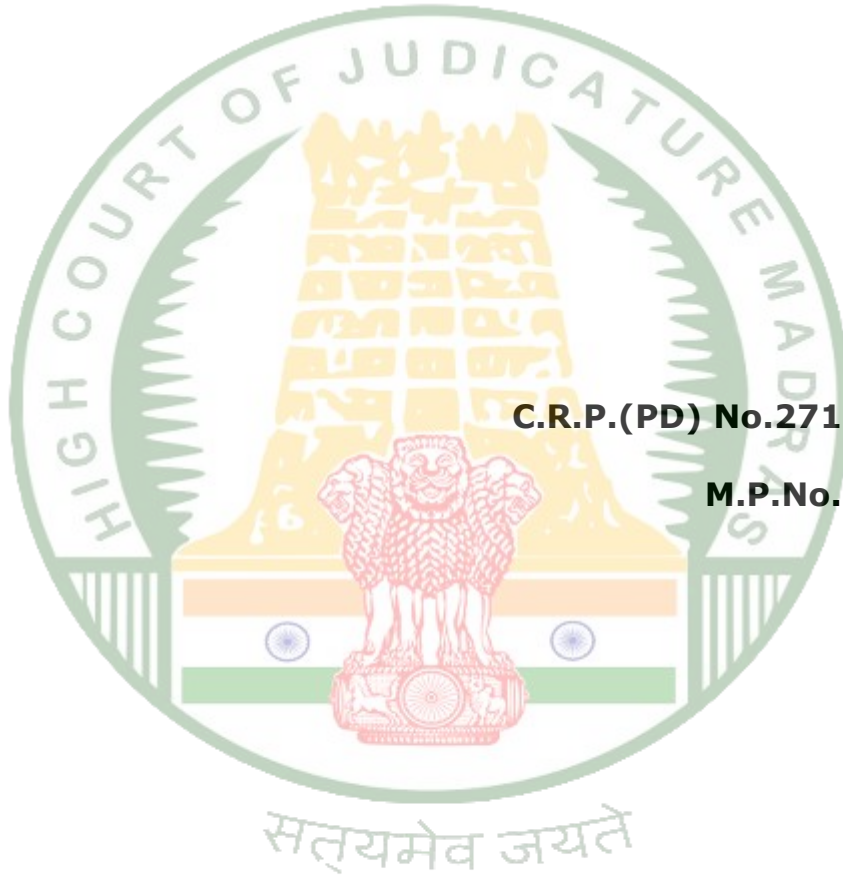
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**M.V.MURALIDARAN, J.**

VS



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