

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.04.2018

CORAM

The Hon'ble Mr.Justice **P.VELMURUGAN**

CRP(PD).Nos.1202 and 1203 of 2018 &
C.M.P.No.7016 of 2018

1.Sambasivam
2.Singaravel

.. Petitioners in both CRPs

vs.

1.K.Ganesan
2.Annamalai
3.Panchalai
4.Kuppusamy Konar

.. Respondents in both CRPs

PRAYER in CRP.No.1202 of 2018 Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order in I.A.No.14 of 2017 in O.S.No.118 of 2009 dated 22.12.2017, on the file of the Additional District Munsif Court, Thiruvannamalai.

PRAYER in CRP.No.1203 of 2018 Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order in I.A.No.13 of 2017 in O.S.No.118 of 2009 dated 22.12.2017, on the file of the Additional District Munsif Court, Thiruvannamalai.

For Petitioners in
both CRPs

... M/s.P.Vasanth

COMMON ORDER

These Civil Revision Petitions have been filed by the petitioner against the order passed in I.A.Nos.14 and 13 of 2018 O.S.No.118 of 2009 dated 22.12.2017, on the file of the Additional District Munsif Court, Thiruvannamalai.

2. The petitioners/plaintiffs have filed a suit for partition in O.S.No.118 of 2009 before the Additional District Munsif Court, Thiruvannamalai, against the respondents/defendants. Resisting the same, the defendants filed a written statement stating that the suit is not maintainable and is also barred by limitation.

3. The petitioners/plaintiffs filed an application I.A.Nos.13 of 2017 in the suit praying for reopening the suit to add a prayer in the suit seeking the sale deed executed in favour of 4th defendant by the defendants 1 to 3 in respect of suit schedule properties as null and void and I.A.No.14 of 2017 under Order 6, Rule 17 of CPC to amend the plaint accordingly.

4. The trial has commenced and the plaintiff's side evidence was also closed. Against both petitions, a counter was filed by the 4th respondent/4th defendant contending that the 4th defendant has already advanced his argument and the suit has been posted for plaintiff's arguments and the plaintiffs herein, in order to protract the proceedings, had filed the above petition and prayed for dismissal of the same.

5. After considering the averments on both sides, the learned trial Judge has dismissed I.A.No.13 of 2017 and I.A.No.14 of 2017 holding that the plaintiffs were well aware of the sale deed dated 20.11.2003 in the year 2007 itself and the original suit was filed in the year 2009. Further plaintiff's side evidence was closed and examination of witnesses on the side of 4th defendant was also completed and further the plaintiffs have pleaded in their deposition that they were very well aware of the sale deed dated 20.11.2003 and moreover, at the fag end of the trial an application filed by the plaintiffs seeking to reopen and consequently to amend the prayer in the plaint, is not sustainable in law and both the applications were dismissed.

6. Aggrieved against the fair and decreetal order passed by the trial court in I.A.Nos.13 and 14 of 2017, these Civil Revision Petitions have been preferred by the plaintiffs as Revision Petitioners.

7. Heard the learned counsel appearing for the petitioners. None appeared on behalf of the respondents and perused the materials available on record.

8. The learned counsel for the revision petitioners would contend that the plaintiffs have sufficiently pleaded in the plaint that the sale deed in favour of 4th defendant was executed with malafide intention to deprive the share to the plaintiffs and since inadvertently the pleadings with regard to relief of declaration was left out and as such, the amendment is sought to include the relief of declaration and for such purpose, Re-open is necessary. He would further contend that the amendment sought for would not alter the nature or character of the suit and in the event of allowing amendment petition, multiplication of proceedings can be avoided and substantial relief can be rendered to the parties.

9. It is his further contention that at any stage of proceedings, amendment can be permitted by the court in the interest of justice and as such the court below ought to have reopened the case and ought to have permitted the amendment. Hence he prayed for allowing of these Civil Revision Petitions.

10. In the order passed by the trial Court, it was clearly stated that the suit for partition was filed in the year 2009 and the plaintiffs came to know about the sale deed dated 20.11.2003 in the year 2007 itself. At the time of filing the suit in the year of 2009 the petitioner was aware of the said sale deed, the 4th defendant has filed a written statement contending that he and his predecessor in interest are in continuous possession and enjoyment of the suit property and have prescribed title to the same by adverse possession. It is his further contention that if the plaintiffs have any grievance, they must have filed the suit within 3 years from the date of attaining majority or within 12 years from the date of alienation. Hence the relief of partition is barred by limitation. The plaintiffs have given only reason that they came to know about the sale deed in the year of 2007 that is before filing of the suit in 2009.

11. It is not in dispute that the plaintiffs have filed the suit in the year of 2009 and also the plaintiffs were not in possession of the suit property and the defendants have sold the property in the year 2003 itself and the plaintiffs came to know about the same very well in the year 2007 itself much prior to filing of suit, but they have come forward with the applications for re-opening the case and to amend the prayer in the plaint seeking the sale deed executed in favour of 4th defendant as null and void belatedly after completion of their evidence. Hence, the learned trial Judge has dismissed the applications for re-open and amendment by holding that they were not sustainable in law. There is no illegality or irregularity in the order passed by the trial Court.

12. In the result, these Civil Revision Petitions are dismissed. No costs. Consequently connected miscellaneous petition is closed.

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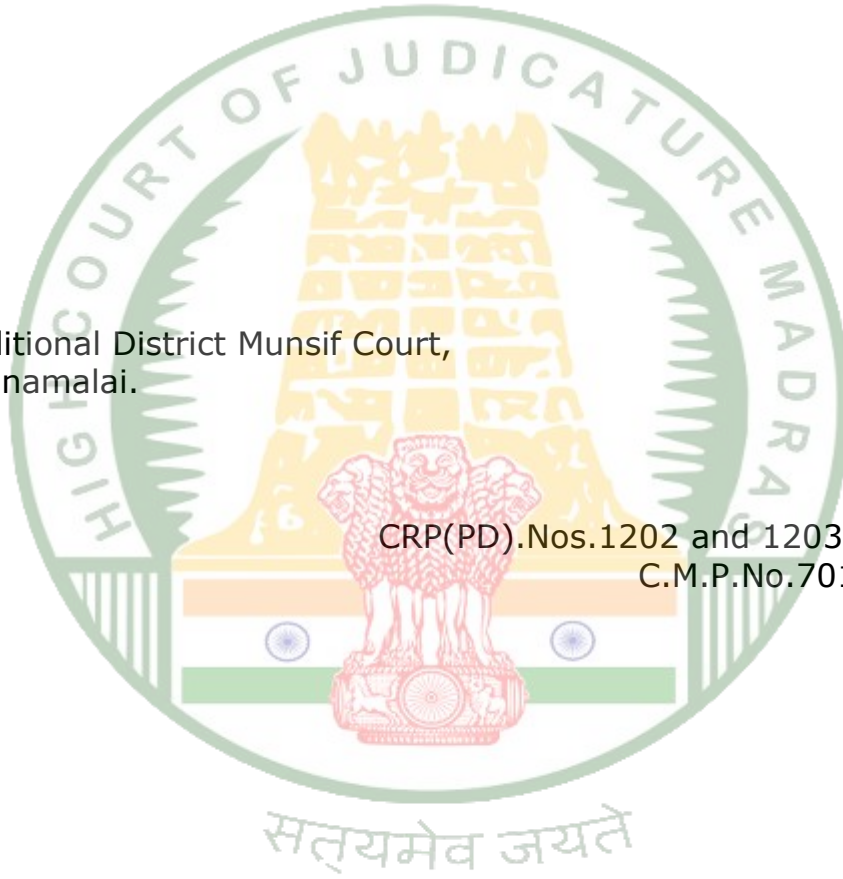
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P.VELMURUGAN.J,
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To

The Additional District Munsif Court,
Thiruvannamalai.



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