

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.12.2018

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.R.P.(PD).No.3595 of 2014

and

M.P.No.1 of 2014

1.R.Gopalakrishnan
2.C.G.Subbulakshmi
3.C.G.Ravikumar

...
Vs.

Petitioners

1.K.Arumugam
2.Rukumani
3.C.G.Manickam

...

Respondents

Prayer :- The Civil Revision Petition has been filed under Article 227 of the Constitution of India against the order dated 30.10.2013 passed in I.A.No.610 of 2013 in O.S.No.567 of 2010 on the file of the V Additional District and Sessions Judge, Coimbatore.

For Petitioners : Mr.S.Dhanasekaran

For Respondent : Mr.P.Raja
Nos.1 & 2

Respondent No.3 : II batta due

ORDER

The instant revision has been filed challenging the order dated 30.10.2013 passed in I.A.No.610 of 2013 in O.S.No.567 of 2010 on the file of the V Additional District and Sessions Judge, Coimbatore.

Brief facts leading to the filing of the revision.

2.The petitioners are the plaintiffs in the suit O.S.No.567 of 2010. The petitioners have filed a suit against the respondents for declaration that they are the absolute owners of the suit schedule property and they have also sought to set aside the sale deeds allegedly executed by the petitioners' represented by the third respondent, who acted as their power agent in favour of the first and second respondents.

3.Written statement was also filed by the first and second respondents in the suit. After framing of issues, trial also commenced. After commencement of trial, I.A.No.610 of 2013 was filed by the petitioners under Order VI Rule 17 CPC seeking to amend the plaint by including the prayer for a declaration that the power of attorney dated 22.12.2013 registered as document No.486 of 2003 before the Gandhipuram, Sub Registrar office was obtained fraudulently by the 3rd respondent/3rd defendant. The respondents No.1 & 2 did not file their counter in I.A.No.610 of 2013.

4.The trial Court, by its order dated 30.10.2013, dismissed I.A.No.610 of 2013 filed by the petitioners on the ground that originally in the plaint averments, the petitioners have stated that the power of attorney was obtained by undue influence and coercion by the first and

second respondents but, now in their affidavit filed in support of I.A.No.610 of 2013 seeking amendment of the plaint, they have stated that the power of attorney was fraudulently obtained and is a forged document. The trial Court held that the petitioners want to substitute a new fact and a new cause of action in the amendment application. With these observations, the trial Court rejected I.A.No.610 of 2013 filed by the petitioners. Aggrieved by the dismissal of I.A.No.610 of 2013, the petitioners have filed the instant revision.

5.Heard Mr.S.Dhanasekaran, learned counsel appearing for the petitioners and Mr.P.Raja, learned counsel appearing for the first and second respondents.

6.According to the learned counsel appearing for the petitioners, the trial Court erred in dismissing the amendment application holding that the petitioners have changed the version and want to introduce a new theory and by this proposed amendment, the petitioners want to withdraw the earlier admission made by them. According to him, for the effective adjudication of the dispute, the amendment sought for by the petitioners is very much essential. According to him, since the 3rd respondent by the aid of a power of attorney fraudulently obtained by him from the petitioners, has sold the property to the first and second respondents and therefore, for the effective adjudication of the dispute,

the amendment sought for in the prayer column of the plaint is very much essential. Therefore, according to him, the trial Court ought to have allowed the amendment application.

7. Per contra, the learned counsel appearing for the respondents 1 & 2 would submit that the averments contained in the amendment application in I.A.No.610 of 2013 are contrary to the pleadings in the plaint. Further, he would contend that the amendment application was filed, after commencement of the trial and no reasons have been given in the affidavit to show that the petitioners had shown due diligence for not filing the amendment application before the trial.

DISCUSSION:

8. It is admitted by the petitioners that the amendment application was filed under Order VI Rule 17 CPC after commencement of trial. The proviso to Order VI Rule 17 CPC makes it clear that no application for amendment shall be allowed after the trial has commenced, unless the Court come to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. It is the case of the petitioners that the power of attorney was obtained by the third respondent from them fraudulently and is a forged document. The power of Attorney dated 22.12.2003 was allegedly executed by the petitioners even prior to the institution of the suit. In

the plaint averments, the petitioners have stated that the power of Attorney was obtained by the 3rd respondent due to coercion and undue influence but in the affidavit filed in support of I.A.No.610 of 2013, the petitioners have stated that it is a forged document. The amendment sought for by the petitioners in I.A.No.610 of 2013 is to amend the prayer column in the plaint to declare the power of Attorney executed in favour of the 3rd respondent was fraudulently obtained by him. The trial Court, has considered the plaint averments and has also considered the averments contained in the affidavit filed in support of I.A.No.610 of 2013 and has come to the right conclusion that:

- (a) the proposed amendment not only changed the original cause of action but introduced a new case.
- (b) The proposed amendment and the relief claimed is time barred.
- (c) The proposed amendment took away a right already accrued to the respondent/defendant.
- (d) It is a post trial amendment but no explanation was offered why it was already failed to be pleaded.

This Court is of the considered view, the trial Court has passed a well considered order and has rightly rejected the amendment application.

In the result, there is no merit in the Civil Revision Petition. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. Since the suit is of the year 2010, this Court directs the trial Court to dispose of the suit within a period of 6 months from the date of the receipt of a copy of this order.

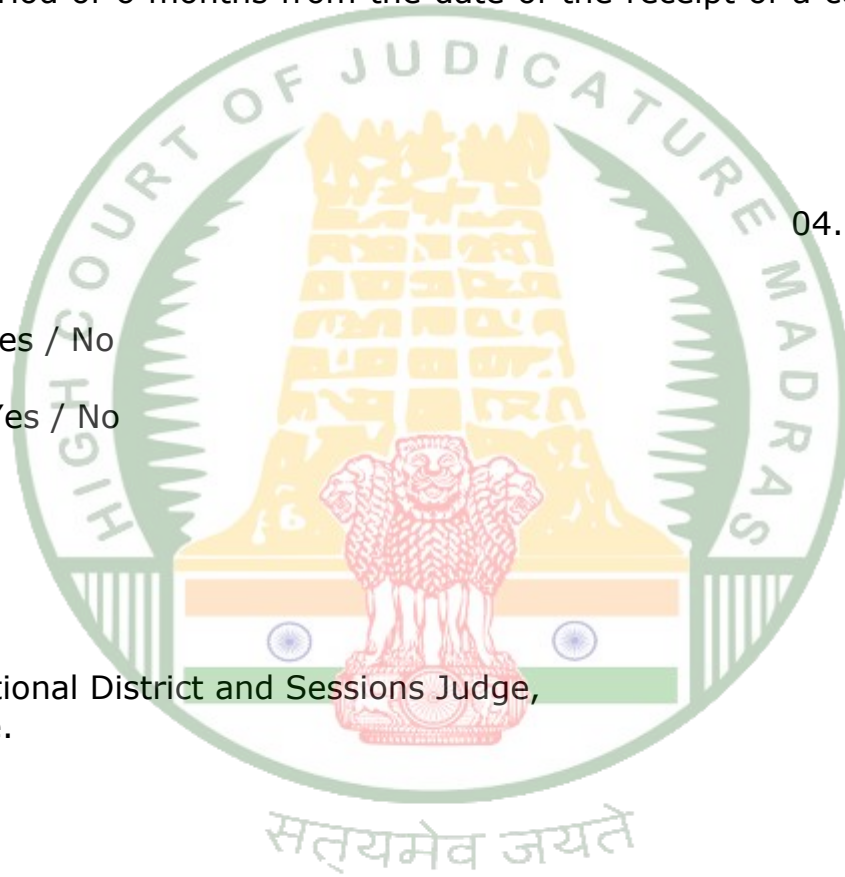
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To

The V Additional District and Sessions Judge,
Coimbatore.

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ABDUL QUDDHOSE,J.

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