



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED : 10.07.2018

CORAM :

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (MD) (PD) No.576 of 2014  
and  
M.P. (MD) No.1 of 2014

1.A.Regies R.George

2.G.Geno Julio

3.G.Godwin Roy

4.G.Gills Leonard

5.G.Gerlin Verona

6.G.Gemma Roase

... Petitioners / Petitioners / Plaintiffs

vs.

1.I.Wilson

2.C.Sundar Singh

3.M.George

4.Joseph Dinesh

5.M/s.Shubh Realty (South) Private Limited,  
represented by its Director,  
Office at 1/3 Leo's Building Salai Puthur Road,  
Valliyoore,  
Radhapuram Taluk,  
Tirunelveli District.

6.The Collector,  
Tirunelveli District,  
Having its office at  
Collectorate Campus,  
Tirunelveli Town and Munsif.

7.The Special Tahsildar,  
Adi Dravidar Welfare Department,  
Nanguneri,  
Tirunelveli District.



8.The Tahsildar,  
Tirunelveli District,  
Having office at  
Taluk Office,  
Radhapuram Taluk,  
Tirunelveli District.

... Respondents / Respondents / Defendants

Prayer:-Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.271 of 2012 in O.S.No.26 of 2009 dated 30.10.2013 pending on the file of the Subordinate Judge, Valliyoor.

For Petitioners : Mr.N.Sudhagar Nagaraj

For R1, R4, R6 to R8 : No appearance

For R2 : Mr.J.Ashok for  
M/s Jeyapaul Associates

For R3 : Mr.S.Sajji Bino

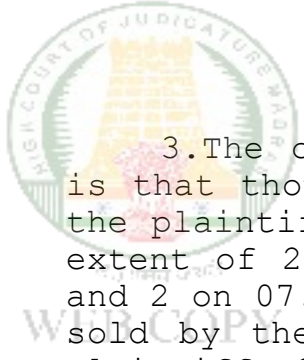
For R5 : Mr.D.Rajkumar

### ORDER

This civil revision petition has been filed by the plaintiffs as against the order passed by the learned Subordinate Judge, Valliyoor, in I.A.No.271 of 2012 in O.S.No.26 of 2009 dated 30.10.2013, dismissing the petition filed by the plaintiffs / revision petitioners to amend the plaint in O.S.No.26 of 2009.

2.The brief facts that are necessary for the disposal of the civil revision petition are as follows:

The revision petitioners filed a suit in O.S.No.26 of 2009 on the file of the learned Subordinate Judge, Valliyoor, for a declaration that they are the absolute owners of the suit property being an extent of 60 cents in S.No.486/3, Thanakkankulam Village, Tirunelveli District, for a declaration that the sale deed executed by the husband of the first plaintiff by name, R.George, in favour of the defendants 1 and 2 dated 07.05.1997 is null and void insofar as the suit property is concerned and not binding on the plaintiffs and for a declaration that another sale deed executed by the defendants 1 and 2 in favour of the third defendant dated 30.11.2001 is null and void insofar as the suit property is concerned and not binding on the plaintiffs. The suit property is, therefore, only the property of an extent of 60 cents in S.No.486/3, in Thanakkankulam Village, Radhapuram Taluk, Tirunelveli District.



3.The case of the plaintiffs as set out in the original plaint is that though the husband of the first plaintiff and the father of the plaintiffs 2 to 6 had sold the entire suit property measuring an extent of 2 acres 60 cents in S.No.486/3, in favour of defendants 1 and 2 on 07.05.1997, it is stated that the entire property, which was sold by the husband of the first plaintiff and the father of the plaintiffs 2 to 6 was acquired by the Tamil Nadu State Government for Homeless Hindu Adi Dravidas by effecting publication in the Gazette on 01.03.1997 under Section 4 (1) of Acquisition of Land for Harijan Welfare Schemes Act, 1978 and that the property absolutely vest with the Government with effect from 01.03.1997.

4.It is further stated that the husband of the first plaintiff and the father of the plaintiffs 2 to 6, therefore, did not have any right, title or interest over the entire extent of land, namely, 2 acres 60 cents in S.No.486/3, in Thanakkankulam Village, Tirunelveli District.

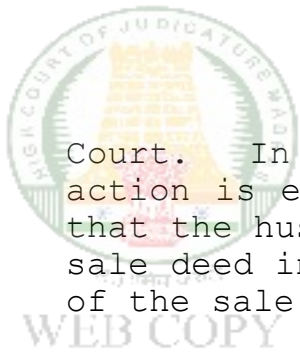
5.It is the further case that an extent of 60 cents in S.No.486/3, was later reconveyed in favour of the husband of the first plaintiff and the father of the plaintiffs 2 to 6. Therefore, the suit was in relation to the 60 cents of land alleged to have been reconveyed by the Government in favour of the husband of the first plaintiff and the father of the plaintiffs 2 to 6.

6.During the pendency of the suit, the revision petitioners filed an application in I.A.No.271 of 2012 for amendment of plaint in a lengthy petition. Amendment of plaint is to add two more properties in the schedule and to include a lengthy paragraph as paragraph 28(a) in the original plaint. In the earlier plaint, the fact that the suit property was sold by the husband of the first plaintiff and the father of the plaintiffs 2 to 6 in favour of the defendants 1 and 2 is admitted and there was no challenge to the genuineness of the transaction under the sale deed. However, by way of amendment, the revision petitioners have stated that the sale deed was not executed by the husband of the first plaintiff and the father of the plaintiffs 2 to 6 and that it is fraudulently created. Since sale deed that was executed in favour of the defendants 1 and 2 is also in respect of other properties, two more properties were also sought to be included in the schedule. The prayer for declaration of title and recovery of possession was introduced. Petition for amendment was seriously opposed by the respondents.

7.The lower Court dismissed the petition for amendment mainly on the ground that the amendment will alter the original cause of action and it is a new plea on the new set of facts. Challenging the order passed by the lower Court, dismissing the petition for amendment, the above civil revision petition is filed by the plaintiffs.

<https://hcservices.ecourts.gov.in/hcservices/>

8.Going by the facts as admitted before this Court, this Court is unable to see any legal infirmity in the order passed by the lower



Court. In the original plaint, it can be seen that the cause of action is entirely different. The plaintiffs categorically admitted that the husband of the first plaintiff by name, R.George, executed a sale deed in respect of a larger extent of property and the execution of the sale deed is admitted.

9.As a matter of fact, a small extent of 60 cents was claimed by the plaintiffs only on the basis of the reconveyance that was made by the Government in favour of the husband of the first plaintiff subsequent to the sale deed, by which, he sold the property in favour of the defendants 1 and 2.

10.However, by way of amendment, the revision petitioners want to withdraw their admission made in the plaint with regard to the sale deeds executed by the husband of the first plaintiff and the father of the plaintiffs 2 to 6 in favour of the defendants 1 and 2.

11.The contention of the revision petitioners in the affidavit filed in support of the amendment petition is that the husband of the first petitioner, even during his life time, issued a notice to the Sub Registrar, Radhapuram Village and Post, Tirunelveli District, to cancel the sale deed that was executed by him in favour of the defendants 1 and 2. It is seen that the notice issued by the husband of the first petitioner was that he described the sale deed as a fraudulent, illegal and void one, as it was executed by way of security and the sale deed would not bind him. It is seen that the notice was issued on 05.11.2004. The husband of the first plaintiff and the father of the plaintiffs 2 to 6 had not questioned the same by filing a suit at least within a period of three years from the date of transaction or within a period of three years from the date on which he came to know about the fraud or irregularity that was noticed by him.

12.The revision petitioners cannot now come up with the plea on the basis of the said notice, stating that after the suit was filed, they came to know about the said notice.

13.In that view of the matter, even on merits, the case of the petitioners cannot be accepted. The present prayer is also barred by limitation. Insofar as the present amendment is concerned, it is not in dispute that it is also in respect of other two properties on a new cause of action based on a different version, which is quite contrary to the plaint that was filed earlier.

14.In these circumstances, the lower Court has rightly dismissed the petition, as allowing such prayer for amendment would enable the revision petitioners to swallow the admission made by them earlier in the original plaint.

<https://hcservices1.hcscgova.in/hcservices1>  
15.As a result, the Civil Revision petition is dismissed and the order passed in I.A.No.271 of 2012 in O.S.No.26 of 2009 dated 30.10.2013 on the file of the Subordinate Judge, Valliyoor, is



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confirmed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

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/True copy/

Sub Assistant Registrar(CS III)

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To

The Subordinate Judge,  
Valliyoore.

1CC TO MR. N. SUDHAGAR NAGARAJ, ADVOCATE SR 72190

1CC TO MR. T. AUNTONY ARUL RAJ, ADVOCATE SR 72165

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