



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.04.2018

Delivered on: 14.08.2018

CORAM

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

C.R.P. (MD) (PD) No.420 of 2017

and

C.M.P. (MD) No.2112 of 2017

1.M.Manoranjitham
2.M.Logakavitha
3.M.Poopathiraj
4.M.Sangeetha

.. Petitioners

vs.

1.M.Nagalakshmi
2.G.Marichamy
3.T.Saroja
4.T.Uma
5.G.Nagarajan
6.G.Venkatesh

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to allow this Civil Revision Petition and call for the records relating to the order passed by the learned Subordinate Judge, Theni dated 23.12.2016 in I.A.No.889 of 2016 in O.S.No.198 of 2008 and set aside the same and allow the said application.

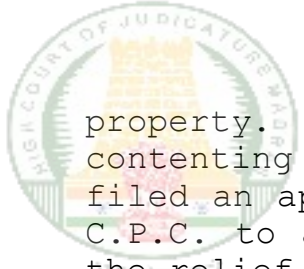
For Petitioners : Mr.N.Dilip Kumar

For Respondents : Mr.B.Rajesh Saravanan
for R1

No Appearance (for R2 to R6)

ORDER

The plaintiffs are all the revision petitioners. It is the case of the revision petitioners that they filed the suit against the respondents herein in O.S.No.198 of 2008 on the file of the learned Sub Court, Theni for Specific Performance and Permanent Injunction restraining the defendants from alienating the suit



property. The defendants filed the written statement and keenly contenting the suit when the trial was on going, the plaintiffs filed an application in I.A.No.889 of 2016 under Order 6, Rule 7 of C.P.C. to amend the plaint in respect of Court Fees and to include the relief of declaration, to declare the sale deed dated 27.12.2000 executed by the defendants 3 to 7 in favour of the 2nd defendant is null and void and not binding on the plaintiffs.

2. According to the revision petitioners that they filed the above suit in O.S.No.198 of 08 for the relief of specific performance and the 1st respondent herein/2nd defendant filed the suit against the petitioners herein in O.S.No.321 of 2008 on the file of the learned District Munsif Court, Theni for the relief of declaration, to declare her as absolute owner of the suit properties and consequential Permanent Injunction. The parties to the above said two suits filed joint memo before the Court below to try both the suits jointly. As per the joint memo, evidence is recorded in O.S.No.198 of 2008. During the course of the trial on the side of revision petitioners, Exhibit A3 sale agreement was marked. It is the contention of the revision petitioners that after execution of sale agreement in favour of the revision petitioners, defendants 3 to 7 executed a registered sale deed on 27.12.2000 in favour of 2nd defendant/2nd respondent herein which is sham and nominal. At the time of filling suit the revision petitioners failed to seek the relief of declaration to declare the above sale deed dated 27.12.2000 is null and void and the same is not bind on them. In fact there is sufficient pleadings in the suit filed by the revision petitioners in respect of sale deed dated 27.12.2000. The said mistake came to the knowledge of revision petitioners only after commencement of trial. Therefore in order to avoid multiplicity of the proceedings they filed the above application seeking to amend the plaint by permitting the plaintiffs/revision petitioners to amend the plaint in respect of Court fee and prayer column and by doing so, no prejudice would be caused to the revision petitioners herein.

3. Per contra, the amendment application was resisted by the 2nd defendant contenting that the proposed amendment petition was filed post trial one and the same cannot be entertained. In fact the 2nd defendant filed a separate suit in O.S.No.321 of 2008 against revision petitioners. In the said suit filed by the 1st respondent/2nd defendant, she examined herself as one of the witness. Further the revision petitioners had the knowledge of the sale deed in favour of the 1st respondent herein even at the time of filing the above suit and the revision petitioners without rising any objection or questioning above said sale deed so far, now after 15 years filed the proposed amendment application that too at the end of trial is highly arbitrary and unsustainable in law and the

<https://hcservices.courtsofmadras.org/hcservices/> allowed. The revision petitioners have not approached the Court with clean hands. Further, if at all the revision



petitioners wants to declare the sale deed of the 1st respondent herein is null and void, they should have filed the same within a period of three years from the date of knowledge over the sale deed. In this case admittedly the revision petitioners had the knowledge of the sale deed, even according to the revision petitioners/plaintiffs in the year 2001 itself. Even otherwise they could have the knowledge of the sale deed in the year 2008 when the 1st respondent herein filed the suit for declaration and therefore the revision petitioners ought to have sought for the relief of declaration of the sale deed within a period of 3 years but they filed amendment application after 15 years which is barred by law. Hence amendment application is liable to be dismissed.

4.The Trial Court by order dated 23.12.2016 dismissed the amendment application filed by the revision petitioners, holding that it is filed beyond period of three years. Feeling aggravated over the same, the revision petitioners are before this Court.

5.This Court has carefully considered the rival submissions made on either side and the entire materials available on records are perused.

6.It is seen from records that the revision petitioners filed the suit for specific performance against the respondents herein wherein in Para 10 of the plaint, it has been specifically pleaded that the 1st petitioner herein/1st plaintiff on coming to know of the alleged sale deed dated 27.12.2000 sent a registered lawyer notice to the 2nd defendant /1st respondent herein on 05.02.2001. From the above, it is made clear that the revision petitioners had the knowledge of the execution of the sale deed in favour of the 1st respondent herein on 05.02.2001 itself. Therefore, as per Article 54 of Limitation Act, suit for declaration shall be filed within a period of 3 years. Admittedly, the revision petitioners filed the amendment petition to include the relief of declaration after 15 years, is clearly barred by limitation. The Learned Trial Judge also rightly held that the proposed amendment petition is barred by Limitation.

7.At this juncture, this Court also considered the judgment relied on by the learned counsel for the revision petitioners reported in 2004 (4) CTC 231, in the case of Pankaja and another - Vs- Yellappa (D) LRs & others. In the said Judgment the Hon'ble Supreme Court has held that the jurisdiction to allow the amendment application or not to allow the same being the discretionary of the Courts and the same will have to be exercised in a judicious evolution of the facts and circumstances of the case. In the present case on hand, the learned trial judge after evaluating the case judiciously, held that the proposed amendment is not maintainable in law and facts. Therefore, the judgment cited supra will have no application at all to the present facts and circumstances of the case.



8. That apart, the Learned Trial Judge has also rightly held that since the 1st respondent herein filed the suit in O.S.No. 321 of 2008 against the revision petitioners, seeking for the relief of declaration, to declare her as absolute owner of the suit property. Therefore, the question of ownership and title to the suit properties including the execution of sale deed dated 27.12.2000 could be decided in the said suit itself. Hence I do not find any infirmity or irregularity in the impugned order passed by the Trial Court.

9. In view of the foregoing reasons, this Court has no hesitation to hold that the proposed amendment petition is not only barred by Limitation, but also lacking merits. In fine, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (WRITS)

/True Copy/

Sub Assistant Registrar (CS-II)

To

The Subordinate Judge,
Theni.

+1CC TO MR.B.RAJESH SARAVANAN ADVOCATE IN SR.NO.78839.

VSV

DS KAK SAR-2 ;07.09.2018; 4P/3C

order made in
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and
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