

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.2997 of 2013 and
M.P.No.1 of 2013

1. Nallammal

2. Shanmugam

... Petitioners

v.

1. Athiannan

2. Sakunthala

3. Palanivel

... Respondents

सत्यमेव जयते

Civil Revision Petition filed under Article 227 of the Constitution of India,
against the fair and decreetal order dated 05.07.2013 made in I.A.No.
574 of 2013 in O.S.No.55 of 2001 on the file of the Additional District
Munsif Court at Tiruchengode.

For Petitioners : Mr.T.L.Thirumalaisamy

For Respondent : Mr.K.Subburam – for R1 & R2
Not Ready in Notice – R3

ORDER

Challenging the fair and final order passed in I.A.No. 574 of 2013 in O.S.No.55 of 2001 on the file of the Additional District Munsif Cour, Tiruchengode, the plaintiffs have filed the above Civil Revision Petition.

2.1 The plaintiffs filed the suit in O.S.No.55 of 2001 for permanent injunction as against the respondents 1 and 2/defendants 1 and 2. The defendants filed their written statement on 04.12.2007 stating that they have purchased the suit property through the plaintiffs' power agent, viz., Palanivel, by virtue of Power of Attorney deed dated 10.11.1997.

2.2 Thereafter, in the year 2012, the plaintiffs filed an application in I.A.No.313 of 2012 to implead their power agent as 3rd defendant in the suit.

2.3 Though the Trial Court dismissed the application, on revision being filed by the plaintiffs, the power agent was impleaded as 3rd defendant in the suit thereafter in the year 2013 revision filed by the plaintiffs in C.R.P.No.588 of 2013. Thereafter, in the year 2013, the plaintiffs filed an application under Order VI, Rule 17 of C.P.C. to amend the plaint by incorporating the prayer for declaration to declare the power of attorney deed dated 10.11.1997 as null and void and also to amend the body of the plaint with regard to the 3rd defendant.

3. It is not in dispute that the said application was filed by the plaintiffs after the commencement of the trial.

4. On a perusal of the proposed amendment sought for by the plaintiffs, it could be seen that they have put up a new case to the prayer sought for originally by them.

5. As already stated, originally the plaintiffs filed the suit for bare injunction as against the respondents 1 and 2. Now, by way of amendment, they are seeking to amend the prayer by seeking for a

prayer to declare the power of attorney deed dated 10.11.1997 executed in favour of the 3rd defendant as null and void. The plaintiffs have also sought for consequential amendment in the body of the plaint with regard to the power of attorney deed as well as with regard to the averments against the 3rd defendant. The application filed by the plaintiffs was contested by the defendants.

6. The Trial Court, taking into consideration the case of both the parties, dismissed the application

7. It is pertinent to note that the defendants 1 and 2 have filed their written statement as early as on 04.12.2007 stating that they have purchased the properties by virtue of the power of attorney deed dated 10.11.1997 executed by the plaintiffs in favour of the 3rd defendant. The plaintiffs filed the amendment application only in the year 2013.

8.. The learned counsel appearing for the petitioners, in support of his contentions, relied upon a judgment reported in **AIR 2004 Supreme Court 4102(1) [pankaja and another v. yellappa (d)**

by L.Rs and others], wherein the Hon'ble Supreme Court held as follows:-

"... 12. So far as the Court's jurisdiction to allow an amendment of pleadings is concerned there can be no two opinion that the same is wide enough to permit amendments even in cases where there has been substantial delay in filing such amendment applications. This Court in numerous cases has held the dominant purpose of allowing the amendment is to minimize the litigation, therefore, if the facts of the case so permits, it is always open to the court to allow applications in spite of the delay and latches in moving such amendment application.

13. But the question for our consideration is whether in cases where the delay has extinguished the right of the party by virtue of expiry of the period of the period of limitation prescribed in law, can the court in the exercise of its discretion take away the right accrued to another party by allowing such belated amendments?

14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of

limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary the same will have to be exercised in a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straight jacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case. ...”

9. Though there is no dispute with regard to the ratio laid down by the Hon'ble Supreme Court in the said judgment, in the case on hand, the plaintiffs have filed the application seeking for amendment after a lapse of nearly 6 years from the date of their knowledge about the alleged power of attorney dated 10.11.1997. That apart, the amendment application has been filed by the plaintiffs after the commencement of the trial. When the plaintiffs had full knowledge about the power of attorney deed, they should have filed the application immediately. Further, the proposed amendment also changes the character of the suit,

which cannot be permitted. In these circumstances, the judgment relied upon by the learned counsel appearing for the petitioners is not applicable to the present case.

10. The Trial Court, while dismissing the application also took into consideration Article 56 of the Limitation Act, which prescribes 3 years limitation to set aside a sale deed executed fraudulently in favour of some third party. The plaintiffs cannot be allowed to file the application for amendment by changing the character of the suit. Further, the amendment application has been filed at a belated stage, which was rightly dismissed by the Trial Court.

11. In these circumstances, I do not find any error or irregularity in the order passed by the Trial Court. The Civil Revision Petition is liable to be dismissed. The learned counsel appearing of the petitioners submitted that since the 3rd respondent has already been impleaded in the suit, liberty may be given to the plaintiffs to file appropriate application to amend the cause title with regard to the inclusion of the name of the 3rd defendant. Since the prayer sought for

by the learned counsel for the petitioners is only consequential to the order passed in the Impleading Application in I.A.No.313 of 2012, liberty is granted to the plaintiffs to file appropriate application for amending the cause title with regard to the inclusion of the name of the 3rd defendant.

12. With the above observations, the Civil Revision Petition is dismissed. No costs. Consequently the connected Miscellaneous Petition is closed.

Index : Yes / No

Speaking order / Non Speaking Order

Rj

24.09.2019

To

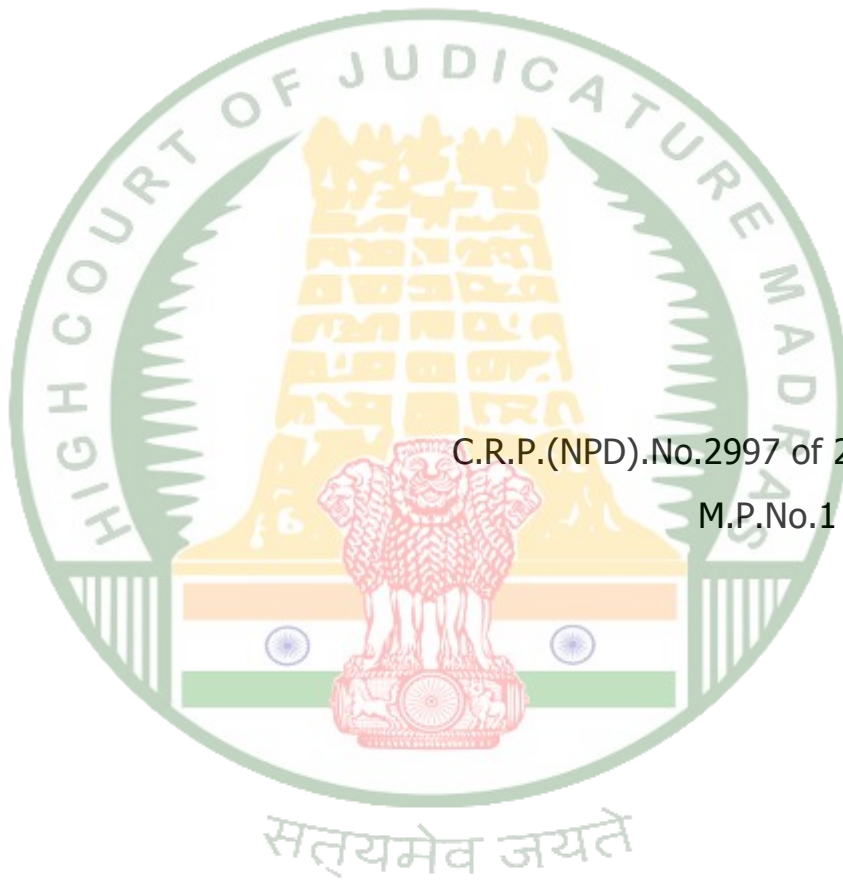
The Additional District Munsif Court ,
Tiruchengode.

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