

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 14.11.2019

Pronounced On : 22.11.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (PD) No.3933 of 2014
and M.P.No.1 of 2014

C.Krishnan

.. Petitioner

Vs

1. Thavamani

2. Sakthivel

3. The Joint Sub Registrar No.1,
Villupuram.

4. Veerappan

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decretal order dated 03.07.2014 made in I.A.No.546 of 2012 in O.S.No.74 of 2006, on the file of the learned 1st Additional Sub Judge, Villupuram.

For Petitioner : Mr.N.Suresh

For Respondents : Mr.R.Arun Dattan (for R4)
for Mr.C.Munusamy
No appearance (for R1 to R3)

ORDER

The plaintiff in OS No.74 of 2006 on the file of the learned Principal Subordinate Judge, Villupuram, is the revision petitioner. Earlier he has preferred the above referred suit, as against the respondents herein,

seeking the following reliefs:

- (a) to set aside the impugned order dated 27.04.2006 by the 3rd defendant.
- (b) Direct the 3rd defendant to register the sale deed executed by the defendants 1 and 2 in favour of the plaintiff.
- (c) To hold that the impugned sale deed in favour of the 4th defendant as void and nonest in the eye of law.
- (d) Direct the defendants to pay costs of suit;

2. During the pendency of the suit, the petitioner filed an application in IA No.546 of 2012 under Order VI Rule 17 of Code of Civil Procedure, seeking permission to amend the plaint, as detailed in the application.

3. The learned 1st Additional Subordinate Judge, Villupuram, after receiving the objection from the 4th respondent herein, by order dated 03.07.2014, dismissed the application filed by the petitioner in IA No.546 of 2012.

4. Aggrieved over the same, the petitioner is before this Court with the present Civil Revision Petition.

5. In the impugned order passed, the learned 1st Additional Subordinate Judge, Villupuram, has held that the prayer sought for by the petitioner in the interlocutory application is against the provision found

under Section 77 of the Registration Act. He has further held that instead of filing a suit for declaration and permanent injunction, the petitioner has filed an application, belatedly, to amend the plaint for the relief of declaration.

6. In this regard, the learned counsel appearing for the petitioner present and would contend that by following the judgment of this Court in ***Ulaganathan and Another Vs. Kannian***, reported in 2012 (4) MLJ 990, the Court below came to the conclusion that the application has been filed belatedly. Further, by relying on the judgment in ***Ellammal Vs. Rangasamy Kounder***, reported in 1998 (2) MLJ 41, the Court below has held that the remedy available to the petitioner under the Registration Act, is useless and ineffective. According to the learned counsel for the petitioner, if the plaint is not amended, multiplicity of proceedings would arise.

7. Per contra, the learned counsel appearing for the respondents / defendants would contend that after filing the suit in the year 2006, the petitioner preferred an application before the trial Court in IA No.70 of 2008, for amendment. Further, after six years, from the date of suit, second application has been filed for amending the prayer, which is purely

erroneous and thereby, impugned order passed by the Court below, is within the principles of law.

8. Upon considering the arguments advanced by either side, the learned counsel appearing for the petitioner/plaintiff would rely on the judgment of our Hon'ble Apex Court, in ***Rameshkumar Agarwal Vs. Rajmala Exports Pvt. Ltd. and Others***, reported in AIR 2012 SC 1887, wherein our Hon'ble Apex Court has held as follows:

“11) It is clear that while deciding the application for amendment ordinarily the Court must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide and dishonest amendments. The purpose and object of Order VI Rule 17 of the Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right and under all circumstances, but the Courts while deciding such prayers should not adopt a hyper-technical approach. Liberal approach should be the general rule particularly, in cases where the other side can be compensated with costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations.”

9. Further, the learned counsel appearing for the petitioner relying on the judgment of this Court made in ***Ulaganathan's case*** [quoted supra] submitted that in the referred case, this Court has held that the findings rendered by the registering authorities cannot form *res judicata*, which

means that the plaintiffs can file a suit for declaration that the sale deed dated 19.02.1989 executed in favour of the defendant, is a forged one.

10. Therefore, learned counsel for the petitioner submitted that, by applying the principle, set out in the judgment relied on by our Hon'ble Apex Court as well as by this Court, the suit filed by the petitioner cannot be thrown away, only for the reason that he has sought the relief as against the order passed by the 3rd defendant / Joint Sub Registrar No.1, Villupuram.

11. However, it is the settled position that the grant of application for amendment shall be subject to certain conditions namely, (i) when the nature of it is changed by permitting amendment; (ii) when the amendment would result in introducing new cause of action and intends to prejudice other party; (iii) when allowing amendment application defeats the law of limitation.

12. Our Hon'ble Apex Court in the judgment reported in ***Rajkumar Gurawaqra Vs. S.K.Sarwagi and Co. (P) Ltd.***, reported in AIR 2008 SC 2303, formulated the above principles, in respect of deciding the applications filed for amendment.

13. Now applying the said principle to the case on hand, in the proposed amendment, the petitioner/plaintiff wants to incorporate the relief of declaration, declaring that that the plaintiff is entitled to the suit property; and for a direction to the defendants to deliver possession of the suit properties to the plaintiff.

14. In this regard, in the impugned order passed by the Court below, it has been clearly averred that on 17.05.2004 itself, the petitioner gained the knowledge in respect of the sale deed executed by the 1st and 2nd defendants in favour of the 4th defendant. Now after the lapse of seven years, plaintiff has filed an application for amendment for relief of declaration, declaring that the sale deed executed in favour of the 4th defendant, is null and void, which is barred by limitation.

15. However, it is the case of the petitioner/plaintiff that on 19.02.2004 itself the 1st and 2nd defendants executed the sale deed in favour of the plaintiff, after receiving Rs.1,55,000/-. Since the said sale deed was an unregistered one, the petitioner has taken steps for compulsory registration and the same was negated by the 3rd defendant / 3rd respondent on 27.04.2006.

16. It is pertinent to mention that earlier, in the year of 2008 itself, as per the order passed in IA No.70 of 2008, permission was granted to the petitioner/plaintiff for making amendment in the plaint. Instead of carrying out the amendment, the petitioner/plaintiff has filed the application belatedly, after the lapse of four years that is only in the year 2012. More than that the suit filed under Section 77 of Registration Act is a statutory one and along with the same, now the petitioner/plaintiff attempt to incorporate two more reliefs, after neglecting the opportunity afforded to him in IA No.70 of 2008. Added further, the petitioner/plaintiff has approached the Court below, at the time when the suit was posted for trial. Hence, if the proposed relief for incorporation in the present suit, after the lapse of six year, is allowed, then it would cause much prejudice to the respondents. Therefore, this Court is of the considered view that there is no material irregularity found in the order dated 03.07.2014. passed by the learned 1st Additional Subordinate Judge, Villupuram. Accordingly, the Civil Revision Petition is dismissed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

22.11.2019

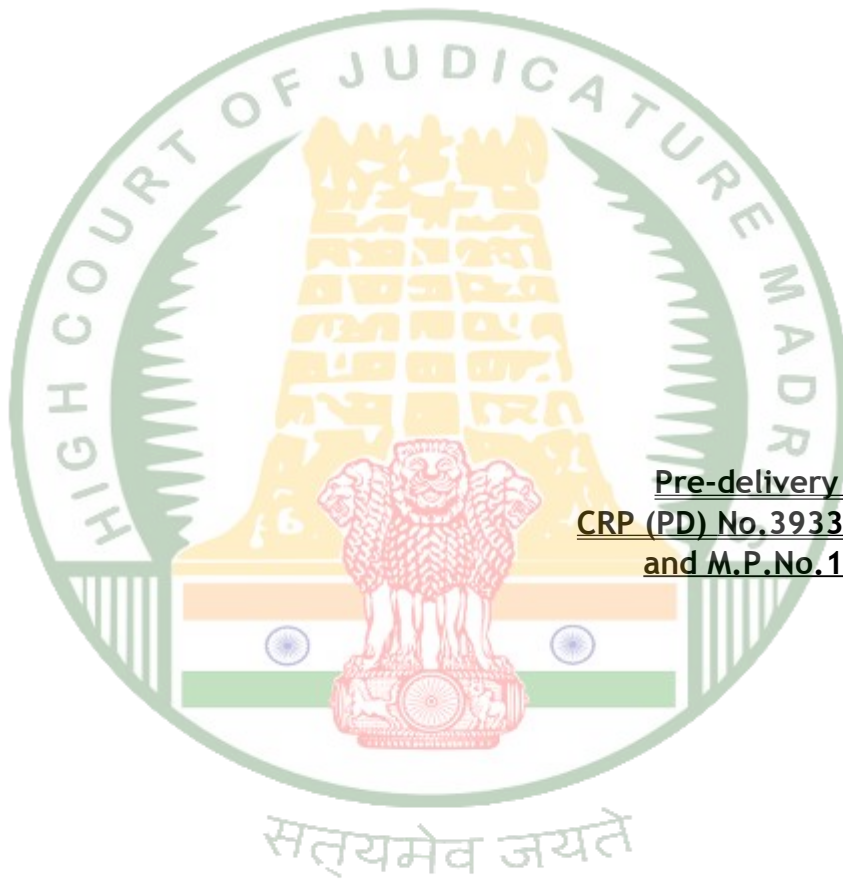
Speaking/Non-speaking order
Index: Yes/No
Internet: Yes
ars

R.PONGIAPPAN, J.,

ars

To

The 1st Additional Subordinate Judge, Villupuram.



Pre-delivery order in
CRP (PD) No.3933 of 2014
and M.P.No.1 of 2014

WEB COPY

22.11.2019