

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

**C.R.P. (PD) Nos. 3274 and 3275 of 2019
and
C.M.P. No. 21259 of 2019**

Ramasamy

... Petitioner
in both C.R.Ps

-Vs-

1. Padmavathi
2. Gurunathan
3. Suseela Devi
4. The District Collector,
Salem District.
5. The District Revenue Officer,
Salem District.
6. The Tahsildar,
Salem District.
7. The Village Administrative Officer,
Thathampatti,
Allikuttai Block,
Salem.
8. The Commissioner,
Salem Municipal Corporation,
Salem.

9. The Revenue Inspector,
Ammapettai Zone.

10. The Superintending Engineer,
Salem Distribution Circle,
T.N.E.B. Udayapatti Post,
Salem.

11. The Executive Engineer,
East Operation and Maintenance,
T.N.E.B. Udayapatti Post,
Salem.

12. The Assistant Executive Engineer,
T.N.E.B. Udayapatti Post,
Salem.

13. The Assistant Engineer,
East Operation and Maintenance,
Thathampatti Post,
Salem.

14. The Manager,
TASMAC,
Sandiyoor Attaiyampatti,
Sandiyoor,
Salem.

... Respondents
in both C.R.Ps

Prayer in C.R.P. No. 3274 of 2019 : Petition filed under Article 227 of the Constitution of India against the fair and final order dated 09.08.2019 made in I.A. No. 1 of 2019 made in O.S. No. 97 of 2012 on the file of the I Additional Sub Court, Salem.

Prayer in C.R.P. No. 3275 of 2019 : Petition filed under Article 227 of the Constitution of India against the fair and final order dated 09.08.2019 made in I.A. No. 2 of 2019 made in O.S. No. 97 of 2012 on the file of the I Additional Sub Court, Salem.

For Petitioner
in both C.R.Ps : Ms. Zeenath Begum

For Respondents
in both C.R.Ps : Ms. K. Suhasini
for M/s. P. Wilson Associates
for Caveator

COMMON ORDER

These two revision petitions have been filed against the fair and final order passed in I.A. Nos. 1 and 2 of 2019 in O.S. No. 97 of 2012 on the file of the I Additional Sub Court, Salem, by order dated 09.08.2019.

2. The petitioner is the plaintiff before the trial Court. The suit was laid by the petitioner / plaintiff for declaration of title of the suit property, where the trial was over and posted for arguments, at this stage, these applications have been filed, to reopen the plaintiff side evidence and he wants to make the amendment in the plaint.

3. It is the case of the petitioner / plaintiff that the suit property was purchased by him on 25.03.2009 from one Duraisamy, who purchased the same on 16.09.1998 from one Raja, who purchased the same from the original owner, for whom the plaintiff stood as Power Agent. Therefore the very same property was bequeathed by the original owner for whom the plaintiff stood as a Power Agent and after two transactions, again it has come in the hands of the plaintiff only, therefore in that circumstances the suit was filed for the afore-stated relief.

4. In the meanwhile, O.S. No. 478 of 1998 and O.S. No.780 of 1999 had been filed by the first and second defendants and they obtained the decree against the vendors of the plaintiff and these factors had been known to the petitioner / plaintiff, even at the time of filing the present suit and the averments made in the plaint has been subsequently struck off by the Court and trial was commenced and was completed and at the argument stage, the very same attempt has been made by the plaintiff / petitioner to make amendment.

5. I have heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents, who entered appearance through caveat and have gone through the materials placed before this Court.

6. The learned Judge in the impugned order has given proper consideration of the issue and has given the following reasons at paragraph No. 12 and subsequently rejected these applications.

“12. Now the crucial point for consideration is whether the plaintiff inspite of due diligence could not have raised the matter before commencement of trial. It is apparently seen that the plaintiff was aware about the decree sought to be declared as null and void even when the suit was filed in the year 2012. Now the petitioner is seeking to incorporate the same prayer after 7 years of suit. So as per the proviso of Order VI Rue 17 C.P.C. the petitioner is not entitled to bring amendment as sought in the petition. Further if a new prayer is permitted to be amended there would be change of cause of action as well as change of nature of suit. The amendment that changes the cause of action

cannot be permitted. Further even during the year 2012 when the suit was filed , the petitioner has not pressed the relief with respect to the relief of declaration of decrees as null and void. So the plaintiff was aware about the decree and he is omitted to seek the said relief. It seems the petitioner was not able to get the plaint registered with the said relief of Declaration of Decree as null and void, but subsequently the same relief is sought to be included in the suit. As rightly pointed out by the learned counsel for the respondents 1 & 3 the said decrees was passed in the year 2001 the relief to declare the said decrees as null and void as sought in the year 2012 itself is beyond limitation. It is seen from the pleadings that the plaintiff has sought relief from the date of knowledge. Even the same is taken into consideration the plaintiff was aware about the decree in the year 2011, now proposed amendment is sought after 8 years. The plaintiff was not able to get register the plaint with the relief of declaration of decree as null and void on the ground of limitation or some other ground as he was not party to the same, now wants to incorporate the same pleadings and same prayer almost after 7 years after the suit. As rightly pointed out by the counsel for the respondents 1 & 3 there are

evidence with respect to the said decree and judgment in O.S.No.478 of 1998 and O.S.No.780 of 1999. If the proposed amendment is allowed the suit and the prayer sought will revert back to the stage of suit. So this Court feels that such relief is sought only to fill up the lacuna.”

7. The said reasons given by the learned Judge is acceptable and sustainable and therefore, it does not require any interference from this Court in these revisions.

8. In that view of the matter, these civil revision petitions are liable to be dismissed and accordingly, are dismissed. Consequently, connected Miscellaneous Petition is also closed. No costs.

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Index : Yes / No

Speaking order / Non speaking order

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R. SURESH KUMAR, J.

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