

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(PD).No.3356 of 2018
&
C.M.P.No.19027 of 2018

S.Dorairaj

...Petitioner

Vs

1.A.Manova

2.V.Christibel

3.V.John Wesly

4.J.Bilal Ahmed

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Indian Constitution to call for records of the Impugned Order dated 04.09.2018 in I.A.No.420 of 2018 in O.S.No.2 of 2012 on the file of the II Additional District Court, Thiruvallur at Poonamallee and set aside the same.

For Petitioner

:

Mr.A.K.Kumarasamy
Senior Counsel
for Mr.Deepak Narayanan. B

For Respondent 1 : No Appearance
For Respondent 2 : Mr.C.Santhosh Kumar
For Respondent 3 : Not ready in Notice
For Respondent 4 : Mr.NVN.Margandeyan
Caveator

ORDER

The above Civil Revision Petition is filed challenging the order passed by the learned II Additional District Judge, Poonamallee in I.A.No.420 of 2018 in O.S.No.2 of 2012 in and by which the learned Judge has allowed the petition filed by the respondent/plaintiff to amend the plaint. The facts in brief which is necessary for this Court to dispose of the Civil Revision Petition are as follows:

2.The suit O.S.No.2 of 2012 was filed by the respondent/plaintiff for various reliefs; primary one being a relief of specific performance against the defendant/revision petitioner herein, to declare sale deeds dated 25.04.2011, 11.05.2011, 17.05.2011 as null and void and for an injunction restraining the 4th defendant from alienating or encumbering the property by way of sale, mortgage or otherwise. When the matter

was posted for trial the impugned petition came to be filed and three new reliefs were sought to be introduced which are as follows:

"I)For a declaration that the sale agreement bearing Doc.No.1530 of 2011 as null and void and not binding upon the plaintiff.

J)For a declaration that the sale deed bearing Doc.No.2554 of 2011 as null and void and not binding upon the plaintiff.

K)For a declaration that the sale deed bearing Doc.No.3752 of 2012 as null and void and not binding upon the plaintiff."

and also for amending the suit with reference to the facts and Court fees etc.,

3.Despite the objections of the revision petitioner the learned Additional District Judge, Poonamallee proceeded to allow the amendment. Challenging the same the revision petitioner is before this Court.

4.Heard, Mr.A.K.Kumarasamy, learned Senior Advocate

appearing on behalf of the revision petitioner. He would bring to the notice of this Court that the original plaint was filed by the revision petitioner on the file of the District Court, Thiruvallur, wherein, it is seen that the plaintiff has struck of the reliefs (b) and (f) which reads as follows:

"b)for a declaration that the sale agreement dated 08.04.2011 registered by the 2nd defendant as document No.1530 of 2011 in S.R.O. Konnur in favour of the 4th defendant is collusive one and therefore null and void and invalid.

f)for declaring that the sale deed dated registered by the 2nd defendant as document No.2554/2011 in S.R.O. Konnur in favour of the 4th defendant is a collusive one and therefore null and void and invalid."

5.A perusal of the amendment application of the reliefs now sought to be introduced by way of amendment would clearly show that prayers (b) and (f) which were struck of is now sought to be introduced by way of amendment as reliefs (I) and (J). As regards relief (K), the same relates to the sale which has been executed after the suit had been filed and is therefore hit by principle of *lis pendens*.

6.A perusal of the affidavit filed in support of the said petition would show that the plaintiff has come forward with the amendment petition on the ground that it was only when the encumbrance certificate was examined, the sale deeds bearing Nos.2554/2011 and 3752/2012 and the agreement of sale bearing document No.1530/2011 came to the knowledge of the plaintiff.

7.On the face of the plaint originally filed on 22.11.2011 before the Principal District and Sessions Court, Tiruvallur, clearly shows that this statement is a false statement. Having deliberately omitted the two reliefs the plaintiff cannot be permitted now to amend the plaint to include this deleted prayer as the same is clearly hit by Article 59 of the Limitation Act.

8.Mr.NVN.Margandeyan, learned counsel appearing on behalf of the respondent would submit that Article 59 would not apply in the instant case, since, the plaintiff is pleading fraud and in case of fraud Article 59 would not apply. He would rely upon the Judgement in ***Prem Singh and others Vs. Birbal and others*** reported in **(2006)**

5 SCC 353 in support of this contention.

9.A perusal of the amendment would clearly indicate that no allegations of fraud has been pleaded. Considering the above facts, a pleading of fraud would not apply to the instant case and therefore the order of the learned District Judge, Tiruvallur in allowing the amendment is perverse and suffers total non application of mind. In the result, the Civil Revision Petition is allowed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

Considering the fact that the suit is of the year 2012 the learned District Judge, Tiruvallur is directed to dispose of the suit with a period of six months from the date of receipt of a copy of the order.

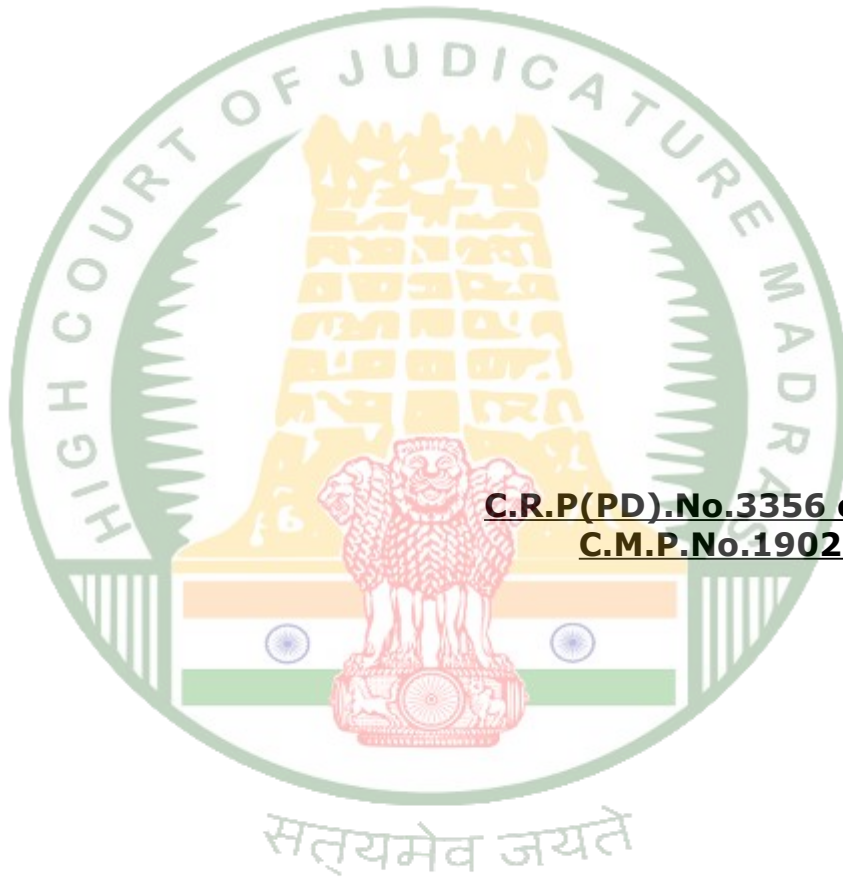
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Index : Yes/No
Speaking order/non-speaking order
To,
The II Additional District Court,
Thiruvallur.

P.T.ASHA, J.,

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C.M.P.No.19027 of 2018**

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