



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 19.03.2019

CORAM :

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CRP (MD) No.547 of 2019 (NPD)

and

CMP. (MD) No.2715 of 2019

Maria Dennis (Died)
1.Jenila

2.M.J.rejivhar

3.M.J.Bejivhar

... Petitioners/Petitioners/Plaintiffs

(P3 and P4 rep.by natural Guardian/
Mother proposed 2nd Petitioner herein)

vs.

1.Basheer Ahamed

2.M.Razy

... Respondents/Respondents/Defendants

PRAYER:- Civil Revision Petition filed the under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order passed in I.A.No.574 of 2018 in O.S.No.184 of 2012 dated 28.11.2018 on the file of the learned Subordinate Judge, Kuzhithurai.

For Petitioners : Mr.S.C.Herold Singh

ORDER

This Civil Revision Petition has been filed to set aside the order passed in I.A.No.574 of 2018 in O.S.No.184 of 2012 dated 28.11.2018 on the file of the learned Subordinate Judge, Kuzhithurai.

2.Before the trial Court, the petitioners herein are the plaintiffs and the respondents herein are the defendants. For the sake of convenience, the parties will be referred to as per their rank before the trial Court.

3.I.A.No.574 of 2018 was filed by the plaintiffs to amend the plaint under order VI Rule 17 of CPC. The plaintiffs in the said I.A., contended that that the plaint schedule property belongs to the deceased first plaintiff namely, Maria Dennis by way of sale deed dated 01.12.2010 and in pursuance of the sale deed, mutation has been effected in favour of him and now the plaintiffs 2 to 4 are in possession and enjoyment of the same by way of inheritance.

<https://hcservices.ecourts.gov.in/hcservices/>

4.On the side of the plaintiffs, the plaintiff was examined as P.W1. On the side of the defendants, the first defendant was



examined as D.W1 and 12 documents were marked. Out of which Ex.B3 is registered before before Amaravilai Sub Registrar Office in Kerala. Based on the said document, the first defendant is claiming title over the plaint schedule property.

5.The learned counsel for the plaintiffs contended that the plaint schedule property is situated in the jurisdiction of Marthandam Joint I Sub Registrar Office. But Ex.B3 is registered before Amaravilai Sub Registrar Office adding a non existing property. Hence, the plaintiffs filed a petition to amend the plaint after the production of that document before the Court below and the amendment sought by the plaintiffs is as follows:

5 (a) On 13.07.2018, the first defendant was examined as D.W1. During his chief examination, he has produced 12 documents. Among those documents sale deed dated 03.10.2002, is marked as Ex.B3. A mere perusal of that document shows that, that document was fraudulently registered before Amaravila Sub Registrar's Office in Kerala. Since objection has been raised on the side of plaintiff that document was marked subject to objection. The plaint schedule property is situated within the jurisdiction of Marthandam Joint I Sub Registrar Office. But Ex.B3 was secretly registered before Amaravilai Sub Registrar Office in Kerala adding a non existing property as security. Sale deed dated 03.10.2002 registered in favour of first defendant is void ab initio. On the strength of that fraudulent document, first defendant executed a settlement deed dated 03.08.2010 in favour of his wife, the second defendant. That document was registered before Marthandam Joint I Sub Registrar Office. Since the sale deed in the name of the first defendant is a fraudulently created document, he is incompetent to execute any settlement deed in favour of second defendant. Further, in Ex.B3 settlement deed the first defendant did not disclose the trace of title.

6.Further, the learned counsel contended that the said sale deed in favour of the first defendant is fraudulently created and based on the same, he sought for an amendment, for which, the plaintiffs has paid necessary Court fee.

7.The defendants categorically pleaded in their written statement that the first defendant purchased the suit property on 03.10.2002 and the plaintiffs were fully aware of the said fact at the time of filing the written statement, whereas, the plaintiffs denied the same as false and the petition for amendment has to be dismissed.

8.After observing all the facts and the contentions raised on either side, the trial Court has given a finding that the first plaintiff, who was an advocate and his counsel, who is continuously appearing in the case, the legal representatives of the first plaintiff could have got knowledge about the sale deed dated 03.10.2002 in the name of first defendant on 16.04.2014 itself.



9.The plaintiffs further contended that they came to know about the sale deed only on 13.07.2018, when it was marked as Ex.B3, while DW1 was examined in chief but the same has not been considered by the trial Court and the trial Court has dismissed the said petition for amendment, aggrieved by the same, the present Civil Revision Petition has been filed.

10.Heard the learned counsel for the plaintiffs.

11.On perusal of the records, it is observed that the said suit was filed in the year 2012. In the said suit, the plaintiffs are claiming a relief of declaring the title over the plaint schedule property and consequently, the defendants may be restrained by an order of injunction and the plaintiffs came to know about the sale deed only on 13.07.2018, when it was marked as Ex.B3, while DW1 was examined in chief but the same has not been considered by the trial Court, which does not warrant any interference of this Court.

12.In view of the above, the order passed in I.A.No.574 of 2018 in O.S.No.184 of 2012 dated 28.11.2018 on the file of the learned Subordinate Judge, Kuzhithurai, is very much reasonable and there is no merit in this Civil Revision Petition.

13.This Civil Revision Petition is dismissed with the above observation. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

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To

The Subordinate Judge,
Kuzhithurai.

+1CC to Mr.S.C.Herold Singh, Advocate SR.No. 55443.

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