



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 27.04.2019

DELIVERED ON : 30.04.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No. 2704 of 2015

and

M.P. (MD) No. 1 of 2015

K. Rajendran

.. Petitioner/Petitioner/Plaintiff

Vs.

1. S. Chellamuthu

2. A. Arunkumar

.. Respondents/Respondents/Defendant

Prayer: This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the order dated 06.10.2015 passed in I.A.No.407 of 2015 in O.S.No.112 of 2011 by the Additional Sub Court, Karur.

For Petitioner

: Mr. S. Anand Chandrasekar

For Respondents

: Mr. K. Govindarajan

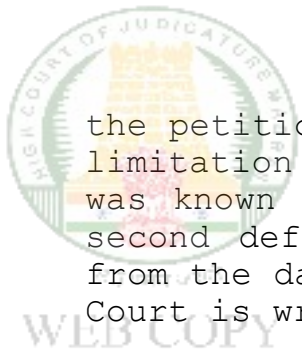
ORDER

Heard Mr. S. Anand Chandrasekar, learned counsel appearing for the petitioner and Mr. K. Govindarajan, learned counsel appearing for the respondents.

2. This Civil Revision Petition has been filed against the order passed in I.A.No.407 of 2015 in O.S.No.112 of 2011 dated 06.10.2015 on the file of the learned Additional Sub Judge, Karur.

3. The petitioner herein is the plaintiff and the respondents herein are the defendants in the suit. The petitioner herein has filed a suit in O.S.No.112 of 2011 for a prayer of partition and for allotment of 1/2th share in the property. In the suit, the petitioner filed a petition in I.A.No.407 of 2015 under Order 6 Rule 17 of C.P.C., seeking permission to amend the plaint. That petition was dismissed by the trial Court. Against the dismissal order, the petitioner has come forward with the present revision petition.

4. On the side of the petitioner, it is stated that after the commencement of the trial, when P.W.1 is in box, the plaintiff has filed this petition to amend the prayer to include the prayer for declaring the sale deed as null and void. The trial Court dismissed



the petition on four grounds. First is that the petition is bared by limitation whereas the suit was filed in the year 2011 and the sale was known to the plaintiff in the year 2013. In the year 2013, the second defendant was impleaded in the suit. The limitation starts from the date of knowledge which is within three years and the trial Court is wrong in deciding that the petition is bared by limitation.

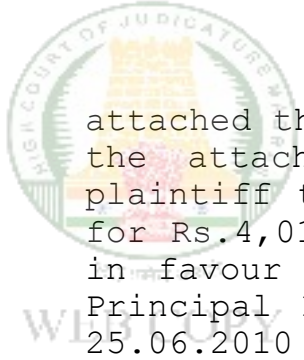
5. On the side of the petitioner, it is stated that the trial Court has wrongly decided that the valuation is paid under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 is not valid. The Court fee is to be paid on the basis of the market value mentioned in the sale deed. It is stated that the petitioner is not a party to the document and the Court fee need not be paid on the market value of the property.

6. On the side of the petitioner, it is further stated that the trial Court is wrong in deciding that post trial amendment is not valid. The post trial amendment is also permissible if the same is unavoidable even after the petitioner adopted due diligence and if the amendment will not change the character and nature of the suit. There is no necessity to examine a new witness or an additional witness. It is stated that the petitioner is not claiming other $\frac{1}{2}^{\text{th}}$ share of the suit property and the petitioner has purchased the property in Court auction and that $\frac{1}{2}^{\text{th}}$ share of the petitioner is to be safeguarded.

7. On the side of the petitioner, it is further stated that the trial Court has wrongly concluded that the validity of the document can be decided only during the course of trial. Though the validity of the document can be decided at the course of trial, there should be specific denial of the document in the plaint and then only the plaintiff will get the right to deny the document and prayed the petition to be allowed.

8. On the side of the respondents, it is stated that the suit and the written statement are filed in the year 2011 itself. However, the plaintiff is claiming that he came to know about the sale only in the year 2013. But he has not filed this petition to amend the prayer column. Only after the plaintiff's side evidence was over, the petitioner has come forward with the revision petition and that the Court fee is to be paid under Section 40 of the Act and not under Section 25 (b) of the Act. This petition is bared by limitation as it is beyond three years from the date of sale. There is no necessity for the amendment and prayed the petition to be dismissed.

9. It is seen that the first defendant and one Murugesan purchased the property through a registered sale deed dated 09.11.1996. One P.Kulanthaiyammal has filed a suit in O.S.No.431 of 2000 before the learned District Munsif, Karur against Murugesan for recovery of the said amount and the suit was decreed in favour of P.Kulanthaiyammal on 21.02.2001. The said P.Kulanthaiyammal has also



attached the suit property before Judgment in I.A.No.453 of 2000 and the attachment was made absolute. In E.P.No.194 of 2009, the plaintiff took $\frac{1}{2}$ th share in the suit property in Court auction sale for Rs.4,01,000/- held on 17.02.2010 and the sale is also confirmed in favour of the plaintiff on 19.04.2010. Thereafter the learned Principal District Munsif, Karur has issued a sale certificate on 25.06.2010 in favour of the plaintiff in respect of the $\frac{1}{2}$ share in the suit property. Subsequently the first defendant and the said Murugesan through their power agent has sold the entire property to the second defendant on 04.12.2003. The document was executed in the year 2011.

10.On the side of the petitioner, it is stated that the amendment petition for declaring the sale deed as null and void is to be filed within a period of three years from the date of sale. This petition was filed in the year 2015. Hence, this petition is bared by limitation. The petitioner came to know about the sale deed in the year 2013 and the limitation starts from the date of knowledge. Hence, it is decided that the petition is not bared by limitation.

11.On the side of the respondents, it is stated that Court fee is to be paid under Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 on the basis of the market value as stated in the sale deed. The petitioner is not a party to the document and hence, the contention of the petitioner is unsustainable. The Court fee paid under Section 25(d) of the Act is correct.

12.Though the petition is filed at the post trial stage, an opportunity for the petitioner to put forth his case is to be given. Unless there is a specific pleading the petitioner cannot prove that point at the time of trial. Moreover the particulars to be amend will not change the character or nature of the suit. There will not be any necessity for the Court to examine new witness on the specific points to be amended.

13.In the above circumstances, this Civil Revision Petition is **allowed** by setting aside the order passed in I.A.No.407 of 2015 in O.S.No.112 of 2011 dated 06.10.2015 on the file of the learned Additional Sub Judge, Karur. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)



To

1.The Additional Sub Judge, Karur.

WEB COPY

+1 CC to M/s.SARVABHAUMAN ASSOCIATES, Advocate SR-64619.

+1 CC to M/s.K.GOVINDARAJAN, Advocate SR-65054.

C.R.P. (PD) (MD) No.2704 of 2015
30.04.2019

CS: (06/06/2019) 4P 4C