

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.1667 of 2011
and M.P. No.1 of 2011

Kashiful Huda Madarasa Trust
rep. By its President and Secretary,
Kashiful Huda Madarasa Trust Buildings,
Numbal BOP, Poonamallee High Road,
Seeneekuppam Village,
Sriperumbadur Taluk. ... Petitioner

Vs

1.Sheik Amirundeen (deceased)
2.Mari Naicker
3.Ganesa Naicker
4.Mumtaz Begum
5.Mohammed Habibullah Sheik
6.Ishrath Begum ... Respondents
(RR4 to 6 brought on record as
Lrs of the deceased R1 vide Court
order dated 04.03.2020 made in
C.M.P.No.25186/2019 in C.R.P.No.1667/2011)

Prayer: Civil Revision Petition is filed under Article 227 of the
Constitution of India, to set aside the fair and decreetal order dated

06.12.2010 made in I.A.No.174 of 2010 in O.S.No.189 of 1996 on the file of the Additional District Munsif Court, Poonamalee.

For Petitioner : Mr. V. Lakshminarayanan

For Respondents : Died (For R1)

Given up vide Court order dated
01.10.2019 (For R2 & R3)

Mr. P.L. Narayanan (For R4 to R6)

ORDER

The matter is heard through "Video Conferencing".

This Civil Revision Petition is filed to set aside the order dated 06.12.2010 made in I.A.No.174 of 2010 in O.S.No.189 of 1996 on the file of the Additional District Munsif Court, Poonamalee.

2. The petitioner is 1st defendant in O.S.No.189 of 1996 on the file of the Additional District Munsif Court, Poonamalee. The 1st respondent filed the said suit for declaration of two sale deeds dated 11.02.1982,

executed by the 2nd respondent in favour of the 3rd respondent and sale deed dated 19.06.1986 executed by the 3rd respondent in favour of the petitioner as null and void and for mesne profit. The petitioner filed written statement and is contesting the suit. The 1st respondent filed petition in I.A.No.174 of 2010 to amend the plaint to include the relief of possession. The petitioner filed counter affidavit and opposed the same on the ground that the amendment sought for is belatedly filed when the suit was in part-heard stage and the relief sought for is barred by limitation. The learned Judge considering the averments in the plaint, affidavit and counter affidavit and judgments relied on, allowed I.A.No.174 of 2010.

3. Against the said order dated 06.12.2010, allowing I.A.No.174 of 2010 in O.S.No.189 of 1996, the petitioner has come out with the present Civil Revision Petition. Pending Civil Revision petition, the 1st respondent died and the respondents 4 to 6 were impleaded as his legal heirs.

4. Mr.V.Lakshminarayanan, learned counsel appearing for the petitioner contended that the amendment sought for is after 14 years of filing of the suit and the reason given by the 1st respondent is unsatisfactory. He further contended that the 1st respondent was well aware in the year 1986 itself that the petitioner is in possession of the suit property and has stated in the written statement that suit for declaration without possession is not maintainable. The learned Judge failed to see that the petitioner is in possession of the property from the year 1986 and prescribed his title. The petitioner trust has already put up superstructure and by ordering amendment, the valuable right of the petitioner's defence is taken away. The learned Judge erred in allowing the I.A. on the ground of avoiding multiplicity of the proceedings. The learned Judge failed to consider the judgment of this Court and the Hon'ble Apex Court that belated petition cannot be entertained and prayed for allowing the Civil Revision Petition.

5. Mr.P.L.Narayanan, learned counsel appearing for the respondents 4 to 6 submitted that the relief of possession has already been pleaded in the plaint filed in the suit. The relief of possession is only a consequential relief of declaration sought for by the 1st respondent. The 1st respondent is not introducing any new cause of action by way of amendment and hence, no prejudice would be caused to the petitioner and respondents 2 and 3. The learned Judge considering the averments in the plaint and entire materials on record, allowed the petition. There is no reason to interfere with the well considered order of the learned Judge and prayed for dismissal of the Civil Revision Petition.

6. Heard the learned counsel appearing for the petitioner as well as the respondents 4 to 6 and perused the materials available on record.

7. The 1st respondent has filed the suit for declaration to declare the two sale deeds dated 11.02.1982 and 19.06.1986 as null and void. The 1st respondent claimed the relief on the ground that he is the Court auction

purchaser and filed E.P against the 2nd respondent. The two sale deeds mentioned in the plaint are sham and nominal and hit by principles of lis-pendence. From the materials on record, it is seen that the possession of the suit property purchased by the 1st respondent by Court auction sale was objected by the petitioner by filing E.A.No.445 of 1990 in E.P.No.527 of 1972. The said proceedings were kept pending and only in the year 2008 by the order dated 10.07.2008, the said petition was dismissed and possession of the 1st respondent in the suit property was confirmed. In view of the same, the contention of the learned counsel appearing for the petitioner that the petition for amendment was filed after 14 years of filing of the suit and reason given by the 1st respondent is not correct are without merits.

8. It is well settled that the petition for amendment must be considered liberally. The petition for amendment can be rejected when by said amendment, a new cause of action is introduced or character of the suit is changed. In the present case, the learned Judge has considered the

averments in the plaint and has held that the amendment does not introduce any new cause of action. The learned Judge has held that necessary averments for the possession is made in the plaint, but the same is omitted in the prayer portion. The learned Judge has properly appreciated all the materials placed before him as well as the scope of Order VI Rule 17 of C.P.C and allowed the I.A.No.174 of 2010 by giving cogent and valid reason. There is no error in the said order of the learned Judge warranting interference by this Court.

9. In the result, the Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

29.09.2020

gsa

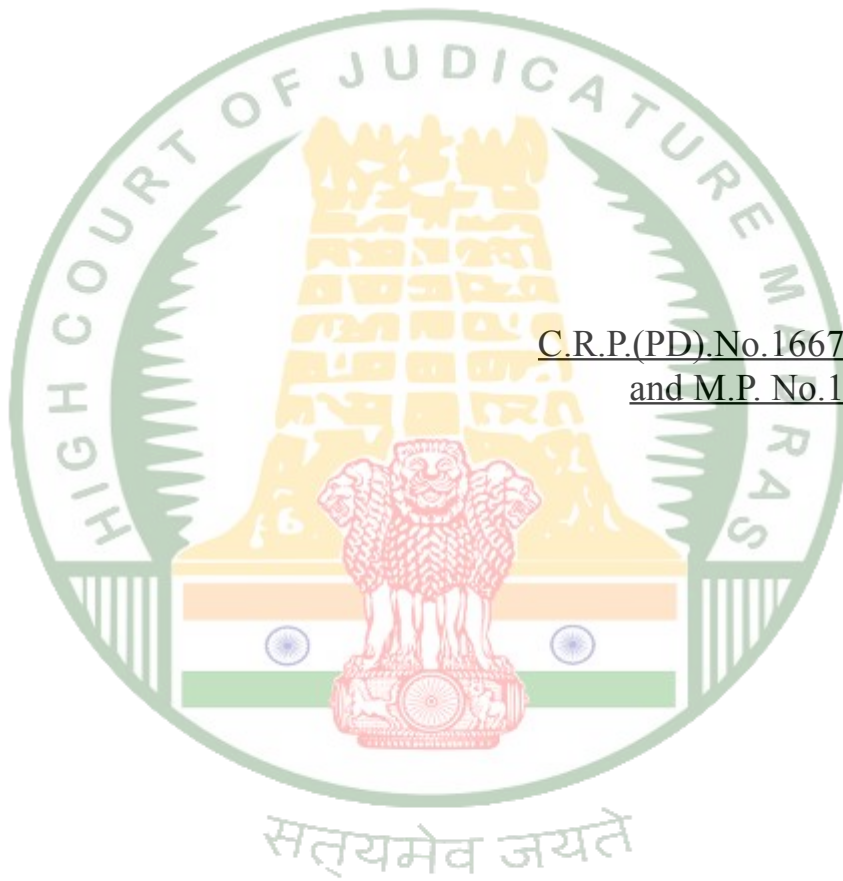
To

The Additional District Munsif,
Poonamalee.

C.R.P.(PD).No.1667 of 2011

V.M.VELUMANI, J.

gsa



C.R.P.(PD).No.1667 of 2011
and M.P. No.1 of 2011

29.09.2020

WEB COPY