

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.12.2020

PRONOUNCED ON : 16.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

CRP(PD).No.4358 of 2015

and

M.P.No.1 of 2015

1. Rangasamy Gounder
2. Muthulakshmi
3. Manjula Devi
4. Revathy
5. Chitra Devi
6. Boopathy

... Petitioners

Vs.

1. Balamurugan
2. Jayachandran

सत्यमेव जयते... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the orders of the learned District Munsif of Tiruppur, dated 15.07.2015 in IA.No.437 of 2015 in OS.No.991 of 2014 and allow the above CRP.

For Petitioners : Mr.J.Hariharan
for Mr.V.Nicholas

For Respondents : Mr. K.Govi Ganesan

ORDER

This Civil Revision Petition has been filed by the petitioners/plaintiffs against the dismissal of their application in IA.No.437 of 205 in OS.No.991 of 2004 on the file of the District Munsif, Thiruppur dated 15.07.015.

2. The petitioners herein had filed an application in IA.No.437 of OS.No.991 of 2004 on the file of the District Munsif, Thiruppur under Order 6 Rule 17 of CPC seeking permission of the court to amend the plaint as mentioned in the said application. The learned District Munsif by the order dated 15.07.2015 had dismissed the said application. Feeling aggrieved, the petitioners/plaintiffs have filed the present Civil Revision Petition.

3. Heard Mr.A.Hariharan for Mr.Nicholas, the learned counsel for the petitioners and Mr.K.Govi Ganesan, the learned counsel for the second defendant.

4. The learned counsel for the petitioners has submitted that the petitioners herein had filed a suit in OS.No.991 of 2004 on the file of the District Munsif, Thiruppur, to declare the sale deed dated 20.10.2003 as null and void and for consequential relief of permanent injunction to restrain the defendants therein from interfering with their peaceful possession and enjoyment of the suit property. He further submitted that the suit properties are the ancestral properties of the petitioners. He further submitted that in the year 2001, the first petitioner was in need of money of Rs.50,000/- and hence, he approached the first respondent who was running a Finance Firm along with the second respondent and made a request to lend a sum of Rs.50,000/- as loan. At that time, the first respondent insisted the first petitioner to execute a general power of attorney in his favour to ensure that the petitioners will repay the said loan promptly. He further submitted that the petitioners, believing the words of the first respondent, had signed the papers which were produced by the first respondent and subsequently, the same was registered in the office of Sub Registrar, Erode. He further submitted that the first respondent demanded to pay interest at the rate of 48% per annum and since the petitioners were in urgent need of money, they have

agreed to repay the said loan with interest at the rate of 48% per annum and accordingly, the first respondent gave a sum of Rs.50,000/- to the first petitioner and subsequently, the first petitioner had repaid the said loan with interest in ten instalments, but, the first respondent did not issue any receipt for the said payments and hence suspecting that the first respondent may cheat them, they had cancelled the said power of attorney on 06.10.2013 and sent a registered notice to the first respondent informing her that the said power of attorney has been cancelled. He further submitted that the first respondent after knowing the contents of the said notice did not receive and returned back and thereafter, he executed a sale deed on 20.10.2003 in favour of the second respondent.

5. The learned counsel for the petitioners has further submitted that since the first respondent had executed the said sale deed in favour of the second respondent only after cancellation of the general power of attorney, the sale will not bind upon the petitioners and hence, they filed a suit in OS.No.991 of 2004 on the file of the District Munsif, Thiruppur to declare the said sale deed as null and void and for consequential relief of permanent injunction to restrain the respondents herein from

interfering with their peaceful possession and enjoyment of the suit property. He further submitted that even though, the petitioners gave instructions to their counsel to file a suit to declare that the said sale deed as null and void and for consequential relief of permanent injunction to restrain the respondents herein from interfering with their peaceful possession and enjoyment of the suit property on the ground that the said general power of attorney was executed only on believing the words of the first respondent that he would grant loan only if the petitioners would execute the general power of attorney in his favour, but, the learned counsel had prepared the plaint with averments that the first petitioner instructed the first respondent to sell the property and give money for their urgent expenses. He further submitted that since the first petitioner is an illiterate person and he does not know to read and write either in tamil or in english and he used to put his signature alone and the other petitioners are female members without knowing the contents of the plaint, they have signed and subsequently, the petitioners engaged another counsel and the said counsel after going through the plaint averments explained to the petitioners what is stated in the plaint and only thereafter, they came to know that their previous counsel has not

properly understood what the petitioners stated with him with regard to under what circumstances the said general power of attorney was executed by the petitioners and hence, immediately the petitioners had filed an application in IA.o.437 of 2015 seeking permission of the court to amend the plaint mentioning the correct facts, but, the learned District Munsif had erroneously dismissed the said application as it was filed after ten years and further, if the proposed amendment is allowed that would change the nature of the case. He further submitted that the core issue involved in the suit is whether the alleged sale deed dated 20.10.2003 executed by the first respondent in favour of the second respondent is valid especially on the ground that the petitioners had already cancelled the said power of attorney which was executed by them in favour of the first respondent and thereafter they issued the notice and under the said circumstances the proposed amendment would not change the nature of the suit.

6. The learned counsel for the petitioners has further submitted that the petitioners in the original plaint have admitted the execution of the general power of attorney in favour of the first respondent and in the

proposed amendment also they have not withdrawn the said admission, under the said circumstances, the trial court ought to have allowed the amendment application which was filed by the petitioners herein. He further submitted that as per Order 6 Rule 17 of CPC, the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. He further submitted that the proviso attached to the said provision prohibits amendments only after commencement of the trial, whereas in this case, admittedly trial not yet commenced and hence, he prayed to allow this Civil Revision Petition and set aside the order passed by the learned trial court and allow the application in IA.No.437 of 2015 in OS.No.991 of 2004 on the file of the District Munsif, Thiruppur.

7. Per Contra, the learned counsel for the second respondent has submitted that on 01.11.2001, the petitioners herein had executed a general power of attorney in favour of the first respondent herein to sell the suit property and based on the said power of attorney, the first

respondent entered into a sale agreement on 01.11.2001 with the second respondent to sell the suit property for Rs.3,50,000/- and also received a sum of Rs.3,00,000/- as advance and agreed to execute the sale deed within two years after receiving balance sale consideration of Rs.50,000/-. He further submitted that subsequently the first petitioner informed the first respondent that he wanted to retain the house property and accordingly, the said property was released from the agreement and the sale consideration for the remaining landed property was fixed at Rs.2,80,000/- and the petitioners also agreed to repay the amount of Rs.20,000/- which was already received by the first respondent with 12% interest and a sale deed was executed for Rs.2,80,000/- in respect of the landed property alone on 20.10.2003 and thereafter, the petitioners herein did not come forward to repay the excess amount of Rs.20,000/- with interest and hence, the second respondent had filed a suit in OS.No.76 of 2006 for recovery of the said amount. He further submitted that since the petitioners had received the sale consideration, in pursuance of the general power of attorney and also the sale agreement dated 01.11.2011, the petitioners cannot cancel the power of attorney. He further submitted that in the plaint, the petitioners have categorically

admitted that the said power of attorney was executed in favour of the first respondent with a specific direction to sell the suit property and after 11 years, they had filed an application seeking amendment of the plaint to withdraw the admission made by them that they executed the general power of attorney to sell the property and they sought to amend the plaint by incorporating the pleadings that they executed the general power of attorney in favour of the first respondent only as security for getting loan and subsequently, they re-paid the said loan with interest. He further submitted that if the proposed amendment is allowed that would change the nature of the case, originally put forth by the petitioners in the plaint and taking into consideration the said facts, the trial court had rightly dismissed their application and in the said order this Court need not interfere and therefore, he prayed to dismiss this Civil Revision Petition.

8. A perusal of the typed set of papers filed by the petitioners shows that the petitioners herein had filed a suit in OS.No.991 of 2012 on the file of the District Munsif, Thiruppur to declare the sale deed dated 20.10.2003 executed by the first respondent herein in favour of the second respondent herein as null and void and for consequential relief

for permanent injunction to restrain the respondents herein from interfering with their peaceful possession and enjoyment of the suit property.

9. In the plaint, the petitioners have averred in Paragraph Nos. 4 and 5 as follows:

4. “ In the end of 2001, the first plaintiff was in financial difficulties and to meet out the family expenses and the third defendant's education expenses, he was in a position to sell a partition of his landed properties. Since the first defendant happen to be the broker, the first plaintiff and said that he would sell the property at highest price, to third parties and for that the plaintiff had to give him the commission attractively. The first plaintiff is being an illiterate person was represented by the first defendant that all the formalities to sell the properties would be done by him, and if the first plaintiff had given the power of attorney, the entire thing would be done by him. Believing the words of the first defendant and also he was in need of money, he was prepared to give the power of attorney in favour of the first defendant. As the other plaintiff happen to be the ladies, the first plaintiff thought that it would be better to execute a power of attorney in favour of the first defendant. On 01.11.2001, the first defendant obtained signatures from the plaintiffs in blank stamped paper and also in blank papers, telling the reasons that the plaintiffs need not

trouble themselves and he would keep every thing ready, and only thing what they had to do was to sign the papers once again before the Sub Registrar of Erode. As per the request of the first defendant the plaintiff have signed all the papers what all the first defendant had shown. The plaintiff also signed with a confidence that they were executing only the power of attorney in favour of the first defendant. They signed before Sub Registrar of Erode. The first defendant promised the plaintiff that he would finish the deal within three months time. Thus a registered power of attorney has been executed in favour of the first defendant on 01.11.2001 giving the power to sell the under mentioned party.

5. Not only months but also the years rolled away. Expecting for the deal, the plaintiffs had been waiting inspite of the delay. One fine day, the first plaintiff went and asked rather demanded if the first defendant could not finish the deal, then better cancel the power of attorney which had been executed by the plaintiffs dated 01.11.2001. More over, the first plaintiff has also crossed his financial difficulties through some other sources. When the first plaintiff approached the first defendant to ask about the deal, he was suspecting him and also expecting that the first defendant would cheat the plaintiff, the plaintiffs have cancelled the power of attorney executed by them, in favour of the first defendant dated 06.10.2003 thereby the house the sell the plaintiff mentioned property was cancelled. In fact the first defendant failed to furnish the copy of the power of 01.11.2001 to the plaintiffs.

Some how they could manage to cancel it. The cancellation deed of power of attorney deed dated 06.10.2003 is herewith produced. On 15.10.2003, the plaintiffs sent a registered notice to the first defendant about the cancellation of the power of attorney, but the defendant did not receive the same and was returned. The office copy of the registered notice sent on 15.10.2003 and the returned cover unserved cover are herewith produced”.

10. In the application seeking amendment of the plaint, the petitioners herein had requested the court to delete entire Paragraph No.4 in the plaint and in Paragraph No.5 up to 18th line which ended in the word “it”. For clarity, the 18th line in Paragraph No.5 of the plaint is extracted here under :

“ some how they could manage to cancel it”

They also stated that after deleting the aforesaid passage in the plaint, the following passage to be added.

“ 2. The defendants are doing Un Registered Finance Transaction at Erode. Due to the need of Rs.50,000/-, the first plaintiff approached the first defendant. The first defendant agree to give the laon for sum of Rs.50,000/- plaintiff but they demand a power of attorney believing the words of the first defendant and also he was in need of money he was prepared

to give power of attorney in favour of the first defendant on 01.01.2001 before the Sub Registrar of Erode. As per the requests of the first defendant, the plaintiff have signed all the papers, the loan amount should be paid in 10 installments and for the rate of the interest 45%. The first plaintiff paid the interest and principle amount to the first defendant but the first defendant not issue the any receipt to the plaintiff. Suspecting him and also expecting the first defendant would cheat the plaintiff, the plaintiffs have cancelled the power of attorney executed by them in favour of the first defendant dated 06.10.2013”.

11. A bare reading of the averments made in the plaint which are now sought to be deleted and the new pleadings which now sought to be added would clearly show that the petitioners want to set up totally a new case with regard to the fact that under what circumstances, they had executed the general power of attorney dated 01.11.2001 in favour of the first respondent. In the original plaint, the petitioners had categorically admitted that they executed the said power of attorney in favour of the first respondent herein with a specific direction to sell the suit property, but in the proposed amendment they have taken a totally different plea as they had executed the said power of attorney only as security for the loan

lent by the first respondent. If the said amendment is allowed that would cause prejudice to the respondents.

12. It is also to be pointed out that in the affidavit filed in support of I.A.No. 437 of 2015 in O.S.No.991 of 2004, the first petitioner herein has stated that even at the time of filing of the suit they gave instructions to their counsel to prepare the plaint by mentioning the fact they had executed the power of attorney in favour of the first respondent only as a security for the loan obtained by them, but their counsel without properly understood their instructions, had prepared the plaint as if they executed the general power of attorney in favour of the first respondent authorizing him to sell the suit property. He further stated that he was an illiterate person and he could not read and write and he used to put his signature alone and hence without knowing the contents of the plaint, he had signed the said plaint and the other petitioners are female members without knowing the contents of the plaint, they had signed the plaint and only subsequently they came to know that their counsel had not prepared the plaint in accordance with the instructions given by them. The said contentions cannot be accepted. Though the first petitioner has

stated in his affidavit that he is an illiterate, he has not stated that the other petitioners also illiterate. Further, the proposed amendment also in english only. Further, the petitioners have not obtained any affidavit from their previous counsel and filed before the court to substantiate their contentions that their counsel had misconstrued their instructions while preparing the plaint. Therefore, the contentions of the petitioners that the first petitioner is an illiterate, they had signed in the plaint without knowing the contents of the same cannot be accepted.

13. In so far as the contention of the learned counsel for the petitioners that the core issue involved in the suit is that whether the sale deed dated 20.10.2003 executed by the first respondent in favour of the second respondent is valid after cancellation of the power of attorney by the petitioners which was given in favour of the first respondent and that if the proposed amendment is allowed that would not cause prejudice to the respondents is concerned, this court is of the view that if the petitioners feel that the proposed amendment is not having any bearing in deciding the case, they need not seek amendment at all. Therefore, looking from any angle, this court does not find any merit in the civil

revision petition. Hence, the same is liable to be dismissed.

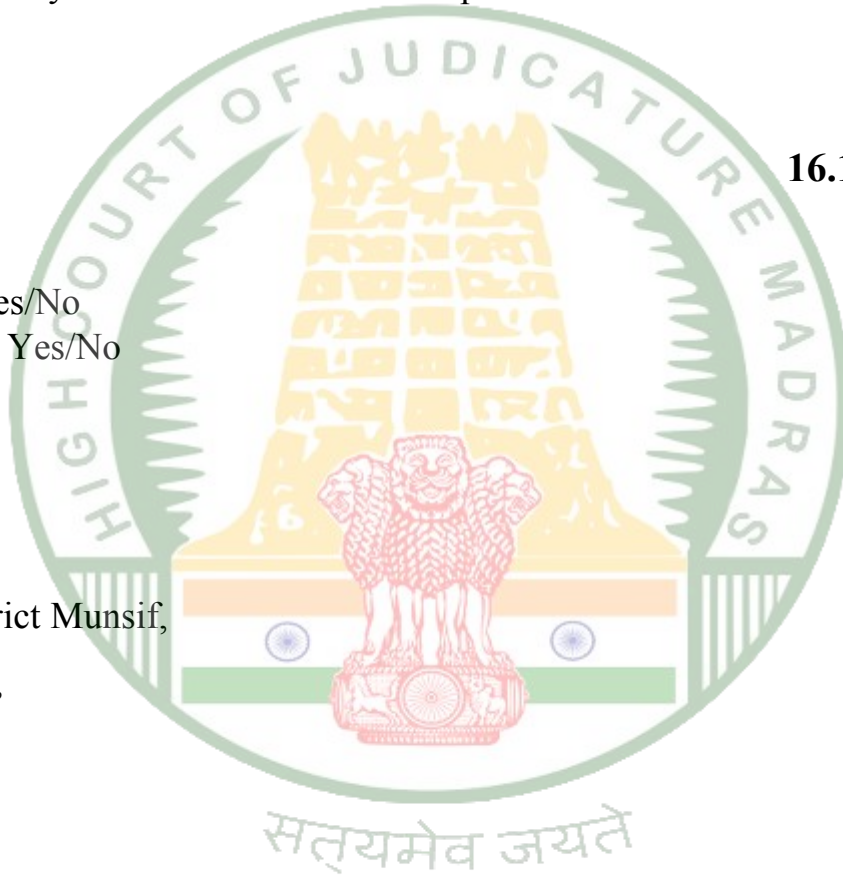
14. In the result, the Civil Revision Petition is dismissed. No costs.

Consequently connected miscellaneous petition is closed.

16.12.2020

Index : Yes/No
Internet : Yes/No
Vv

To
The District Munsif,
Tiruppur,



WEB COPY

CRP (PD).No.4358 of 2015 and
MP.No.1 of 2015

P. RAJAMANICKAM.J.,

Vv



**Pre-Delivery Order made in
C.R.P(PD).No.4358 of 2015
and
M.P.No.1 of 2015**

WEB COPY

16.12.2020