

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.1675 of 2018
and CMP No.9249 of 2018

1.N.Nalini

2. A.Peter Raj

.... Petitioners

Vs

S.M.Balan

... Respondent

Prayer: The Civil Revision petition filed under Article 227 of the Constitution of India, against a fair and decreetal order dated 07.04.2018 made in I.A.No.147 of 2018 in O.S.No.233 of 2012 on the file of the Principal District Judge, Kanchipuram at Chengalpattu and prays to set aside the same.

For Petitioners : Mr.Tranquebar Dorai Vasu for
Mr.S.Muthukumar

For Respondent : Mr.T.P.Sekar

ORDER

The defendants in O.S.No.233 of 2012 challenged an order passed in I.A.No.147 of 2018 allowing the plaintiff to amend the plaint as detailed in the said application.

2. The suit was filed by the plaintiff / respondent herein seeking a declaration that the Sale deed dated 05.07.1996 bearing document No.3447 of 1996 on the file of the Sub Registrar's Office, Adayar as not valid and binding on the plaintiff, for a declaration declaring that the plaintiff is the absolute owner of the Schedule "A" Property, for mandatory injunction directing the defendants to deliver vacant possession of the Schedule "B" property to the plaintiff after removal of the compound wall, for permanent injunction for restraining the defendants their men and agents not to alienate or encumbering the suit Schedule "A" Property.

3. The defendants filed a detailed written statement setting out the particulars regarding the purchases made by them as well as denying the claim of the plaintiff that the defendants had encroached upon the plaintiff's property. When the trial was about to commence, the plaintiff came up with the above application for amendment. The amendments sought for were to correct the extent of land from 0.4.75 cents to 0.3.43 cents in paragraph 5 of the plaint and to correct the date and the registration number of the Sale deed as 3090 of 1999 dated 10.12.1999 instead of 3447 of 1996 dated

04.07.1996 in the plaint, including the prayer portion.

4. This application was opposed by the defendants mainly contending that the applications are belated and the written statement having been filed even on 16.03.2013, the plaintiff ought to have filed an application for amendment much earlier. It would also point out that the relief sought for by way of an amendment is barred by limitation.

5. The learned Principal District Judge, Chengalpattu who heard the application for amendment concluded that the amendment is a pre trial amendment and the corrections sought for appear to be typographical errors which do not affect the rights of the parties. The learned Principal District Judge also concluded that the prejudice that might be caused to the defendants can be compensated by directing payment of cost. On the said conclusions, the learned Principal District Judge allowed the application subject to payment of cost.

6. I have heard Mr.T.D.Vasu, for Mr.S.Muthukumar, learned counsel for petitioners and Mr.T.P.Sekar, learned counsel appearing for the respondent.

7. Mr.T.D.Vasu, learned counsel appearing for the petitioners would vehemently contend that the trial Court was not right in allowing the application for amendment. According to him, the application for amendment is highly belated and in any event the relief regarding declaration that the Sale Deed is invalid and not binding on the plaintiff is barred by limitation.

8. Contending contra, Mr.T.P.Sekar, learned counsel appearing for the respondent would submit that the amendment being a pre trial amendment must be allowed, particularly when what is sought to be corrected by way of an amendment is the extent of the property and the correction in the date and number of the sale deed. He would also point out that the plaintiff's prayer for declaration that he is the absolute owner of the suit A Schedule Property is left intact and the nature of the suit is also not

altered by the amendment. I have considered the rival submissions.

9. Though Mr.T.D.Vasu, learned counsel appearing for the petitioners would rely upon several Judgments in support of his contention on the ground of delay, I do not see any necessity to refer to them since the amendment is a pre trial amendment and the amendments do not change the nature of the suit. By the amendment, the plaintiff seeks to reduce the extent of of the suit property as land measuring about 0.3.43 cents instead of 0.4.75 cents in paragraph 5 of the plaint.

11. I do not see any serious objection that can be projected by the defendants against the said prayer. The other prayer for amendment is to correct the date of the Sale deed and the registration number. The only contention of Mr.T.D.Vasu, learned counsel appearing for the petitioners is that the prayer for such declaration would be barred by limitation. The question of limitation need not be gone into while considering the application for amendment. It is open to the parties to raise the question of limitation at the time of trial and the trial Court will consider the said issue

also.

12. Being a pre trial amendment, as pointed out by the decisions of the Hon'ble Supreme Court in ***J.Samuel & Others Vs. Gattu Mahesh & others reported in 2012 (2) CTC 94***, the Courts will have to be liberal in considering the request of the parties regarding amendment of the plaint. No doubt, Mr.T.D.Vasu, learned counsel, would draw my attention to certain observations of the Hon'ble Supreme Court in paragraph No.16 of the said Judgement wherein it is stated that if due diligence has been exercised, these mistakes should have been noticed immediately. Subsequently the Hon'ble Supreme Court has stated that the entire object of the amendment to Order VI rule 17 of the Code of Civil Procedure, as introduced in 2002 is to stall filing of the applications for amending the pleadings subsequent to the commencement of trial, to avoid surprise and that the parties had sufficient knowledge of other's case. Therefore, the said observations cannot be relied upon for pre trial amendment. Even in the very same Judgment, the Hon'ble Supreme Court has pointed out that the Courts must be liberal while considering a pre trial amendment. Therefore,

I do not see any material irregularity or error in the order of the trial Court to enable me to interfere with the same. The revision therefore fails and it is accordingly dismissed.

13. The plaintiff shall file a petition to carry out the amendment within **15 days** from the date of receipt of either a web copy or a certified copy of this order, which ever is earlier. The defendants will have four weeks time to file additional written statement from the date of filing of the amended plaint. The trial Court is directed to hear and dispose of the suit without being influenced by any of the observations made in this order. No costs. Consequently, connected miscellaneous petition is closed.

30.11.2020

Note : Time bound order

vum

Index: Yes/No

Speaking order / Non speaking order

To:

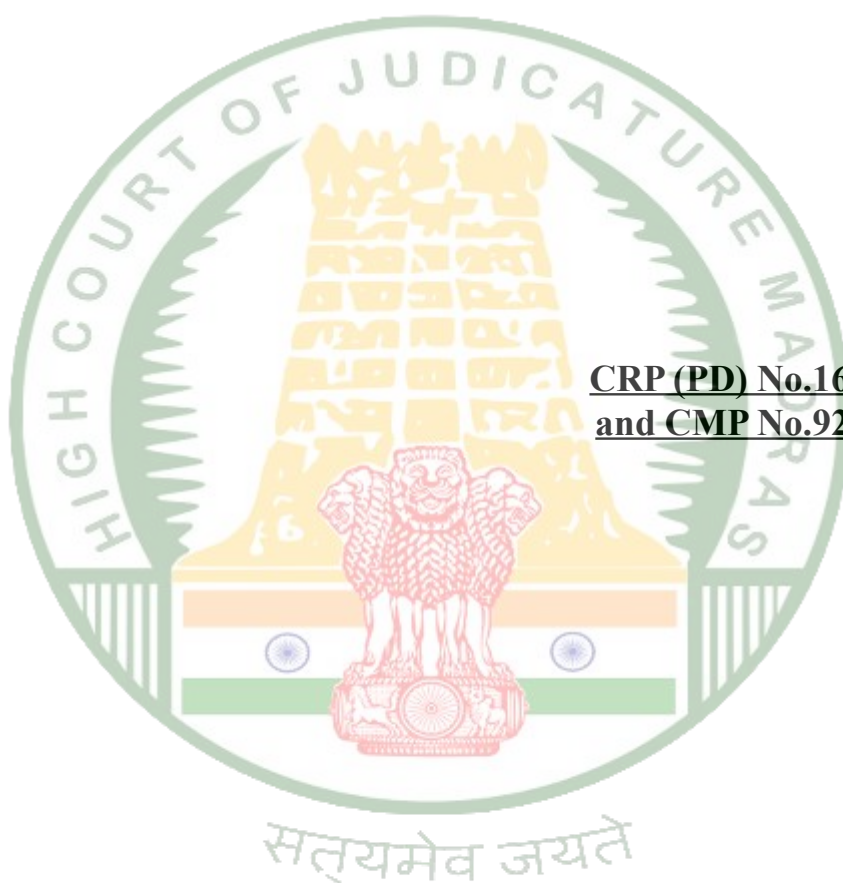
The Principal District Judge,
Kanchipuram at Chengalpattu.

7/8

CRP (PD) No.1675 of 2018
and CMP No.9249 of 2018

R.SUBRAMANIAN, J.

vum



CRP (PD) No.1675 of 2018
and CMP No.9249 of 2018

WEB COPY

30.11.2020