

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2020

CORAM

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No.2912 of 2018

and

C.M.P.No.17023 of 2018

1. P.Ravichandran
2. R.Vijayalakshmi

...Petitioners

Vs.

1. N.Mohan
2. N.Rajagopal
3. N.Balasubramaniam
4. Nataraj (Deleted)
Sub Registrar, Gomangalam,
Sub Registrar Office.
Udumalpet Taluk,
Tirupur.
5. The Sub Registrar,
Sub Registrar Office,
Gomangalam,
Udumalpet Taluk,
Tirupur.
6. The Tasildar (Deleted)
Taluk Office,
Udumalpet.
Tirupur.

...Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 28.02.2017 passed in I.A.No.57 of 2014 in O.S.No.227 of 2009 on the file of District Munsif Court, Udumalpet.

For Petitioners : Mr.A.Sundaravadhanan
For Respondents 1 & 3 : Mr.D.Rajagopalan
For Respondent 2 : No Appearance
For Respondent 5 : Mr.Y.T.Aravind Gosh
Additional Government Pleader

ORDER

This matter is taken up for hearing through Video-Conferencing.

The plaintiffs in O.S.No.227 of 2009 have come up with this Civil Revision Petition aggrieved by the dismissal of their application in I.A.No.57 of 2014 which sought for several amendments to the plaint.

2. The suit was filed for the relief of declaration of title and for permanent injunction restraining the defendants 1 & 3 from interfering with the plaintiffs' peaceful possession and enjoyment of suit properties.

3. According to the plaintiffs, they are the owners of the suit properties. The 1st defendant had agreed to purchase agricultural land in Pattanam Village through first plaintiff and his friend Balakrishnan evidencing such agreement a memorandum of understanding was entered into between the parties on 13.04.2007. Afterwards, certain misunderstanding arose between the parties with reference to performance of the terms of the memorandum of understanding. As a result of which, the defendants 1 and 3 abducted the plaintiffs and extracted power of attorney documents from them. Since the power was obtained by threat and coercion, the plaintiffs on 18.12.2008 cancelled their power of attorney and sent a legal notice to the 1st defendant on 20.12.2008. However, utilising the said power of attorney the 1st defendant had created certain sale deeds on 02.01.2009 in favour of the 3rd defendant. Therefore, according to the plaintiffs, the said sale deeds registered in favour of the 3rd defendant, after cancellation of the power of attorney, are invalid.

4. The plaintiffs would also allege that the power of attorney document was cancelled by a registered instrument dated 18.12.2008 and notice informing the cancellation of power of attorney was received by the 1st defendant on 23.12.2008. It is also claimed that even after cancellation of the power of attorney, the 4th respondent, Sub Registrar, had illegally registered the sale deeds in favour of the 3rd defendant, therefore, the plaintiffs have filed the suit, seeking declaration of their title to the suit properties and direction to the defendants 1 and 3 to handover the sale deeds of the plaintiffs.

5. The suit was resisted by the defendants contending that the power is coupled with interest, and therefore, it cannot be cancelled. It is also claimed that the document executed utilising the power of attorney is valid and the claim

that the power was obtained by coercion was denied. The defendants 3 and 5 filed their written statement in the suit claiming that they are unnecessary parties to the suit. Pending suit, the plaintiffs have come up with this application for amendment of the plaint, seeking to incorporate certain details and to substitute the prayer for declaration of title as to one for a declaration that the sale deeds executed by the power agent on 02.01.2009 are null and void, and consequential amendments of the valuation of the suit were also sought for.

6. The amendments sought for are to include certain details and correct some typographical errors that had crept in the original plaint. The application for amendment was resisted by the defendants contending that the amendment sought for would alter the nature of the suit. It was also claimed that the relief of declaration that the sale deeds are null and void is barred by time. The Learned Trial Judge who considered the application concluded that if the amendment application was allowed it would result in the very character of the suit being altered. The Learned Trial Judge also found that the plaintiffs are seeking to withdraw certain factual admissions made by them in the pleadings. On the said findings, the Learned Trial Judge dismissed the application.

7. I have heard Mr.A.Sundaravadhanan, learned counsel for the petitioners and Mr.D.Rajagopalan, learned counsel for the respondents 1 & 3.

8. Mr.A.Sundaravadhanan, learned counsel for the petitioners, would vehemently contend that the Trial Court was not right in dismissing their application for amendment in its entirety. According to him, the Trial Court must have allowed the application at least in part wherever the amendment sought for do not have the effect of altering the nature of the suit or withdrawal of admissions.

9. Contending per contra, Mr.D.Rajagopalan, learned counsel for the respondents, would submit that the Trial Court had taken into account the effect of the amendments sought for and held that the amendments sought for would result in altering very nature of the suit, and therefore, it cannot be allowed.

10. I have considered the rival submissions.

11. The application filed by the petitioners/plaintiffs is before trial. The Hon'ble Supreme Court and this Court have consistently held in such cases where the amendment sought for is pre-trial amendment, the Court will have to be liberal in granting the amendments. However, the principles of law laid down with regard to the scope of the power of the court to allow

amendments remain unaltered. The plaintiffs cannot be allowed to withdraw the admissions made in the pleadings and the amendments should not result in very nature of the suit being altered.

12. In the light of the law declared it is clear that certain amendments can be allowed since they do not have the above stated effects. I am of the considered opinion that the Trial Court is not right in dismissing the application without examining the effect of each amendment sought for individually. Let me examine the amendments sought for individually.

13. The first prayer sought for in the application is to give up defendants 4 and 6 in the suit, and there can be no objection for this amendment. The second prayer sought for is to amend the address of the plaintiffs. Even this amendment has been dismissed by the Trial Court and there cannot be any objection for amending the address of the plaintiffs. The third prayer sought for is to delete certain portions in Paragraph No.2 of the plaint. This would result in withdrawal of certain admissions made by the plaintiffs. Therefore, it cannot be allowed. The 4th prayer sought for is to remove the entire Paragraph No.3 in the plaint and substitute it with the proposed paragraph. The removal of the existing paragraph 3 would amount to withdrawal of certain admissions made by the plaintiffs, therefore, it cannot be granted. As regards the incorporation of proposed paragraph, instead of substitution, I find that the plaintiffs can be allowed to incorporate the same as additional facts as Paragraph No.3A. The incorporation of these additional facts do not have any effect on the prayer in the suit, therefore, the said amendment can be allowed. As regards the 5th prayer, it is to correct the typographical errors that were made in Line Nos. 2, 13, 20, 23 & 26 of Paragraph No.4 of the plaint, wherein, it has been typed as defendants 1 and 3, instead of defendants 1 to 3. There is another prayer to incorporate certain portions in Paragraph No.4 of the plaint and to incorporate the proposed paragraph at the end of Paragraph No.4 of the plaint. The corrections that were sought for in Prayer No.5 will not have the effect of change in nature of the suit, therefore, the 5th prayer could be allowed.

14. As regards the 6th prayer, again it is for the correction of typographical errors that were made in Line Nos. 2 & 15 of Paragraph No.5 of the plaint, wherein, it has been typed as defendants 1 and 3, instead of defendants 1 to 3. The said correction could also be allowed since it would not result any prejudice to the respondents. The 7th prayer sought for is to correct some typographical errors in Line Nos.2, 4, 22 and 29 of Paragraph No.6 of the plaint and to incorporate the details of Document Nos.437 and 438 of 2009 that were registered in the

year 2009 in Paragraph No.6 of the plaint. The further amendment sought for in the 7th prayer is to remove certain portions i.e. from the Line No.34 to 47 in Paragraph No.6 of the plaint and to include the proposed paragraph after Paragraph No.6 of the plaint. The first part of prayer that is to correct the typographical errors and to incorporate the details of the document numbers is allowed, but, the second part of the prayer that is to delete certain portions in Paragraph No.6 will stand rejected. The plaintiffs also sought to include certain averments that are based on the newspapers report in Paragraph No.6, the same cannot be allowed.

15. The 8th prayer sought for is to correct the date as 11.09.2007, instead of 26.07.2007, in Line No.2 and correct the name as R.Balakrishnan, instead of Ravichandran, in Line No.5 of Paragraph No.7. It is also sought for in the 8th prayer that to remove certain portions i.e. from Line No.8 to 12 in Paragraph No.7 and substitute it with the proposed paragraph. The further amendment sought for in the 8th prayer that to correct the typographical errors that were made in Line Nos.13, 15, & 44 of Paragraph No.7, to correct the word "defendant" as "plaintiff" in Line No.19 of Paragraph No.7 and to remove the sentence "and their attempt of altering the revenue records" in Line Nos.44 and 45 of Paragraph No.7. It is averred everywhere in the plaint that the friend of the first plaintiff is R.Balakrishnan, but only in Paragraph No.7, it is stated that the friend of the first plaintiff is Ravichandran. Therefore, the said amendment can be allowed. The second amendment sought for is to correct the date and to remove certain portions in Paragraph No.7. There cannot be any objection on the side of the respondents for correcting the date in Paragraph No.7, therefore, the said amendment can be allowed, but the deletion sought for in Line Nos.8 & 12 of Paragraph No.7 will stand rejected. As regards the incorporation of proposed paragraph in Paragraph No.7, this Court cannot allow as it relates to the transactions made between the defendants and the land owners. The further correction sought for in the 8th prayer that is to correct the word "defendant" as "plaintiff" in Line No.19 of Paragraph No.7. A reading of Paragraph No.7 shows that it should have been the plaintiff, instead of defendant. Therefore, the said amendment can be allowed. The deletion sought for in Line Nos.44 and 45 of Paragraph No.7 arises out of the giving up of defendants 4 and 6 in the original plaint, therefore, the said amendment can be allowed. The other corrections sought for in the 8th prayer are only the typographical errors, therefore, the same can be allowed.

16. As regards the amendments sought for in the 9th and 10th prayers, it relates to valuation of the suit, therefore, the Trial Court is right in rejecting both the prayers. The 11th

prayer sought for is to correct the property details in Item No.1 as "276E" instead of "276E". Since it is a typographical error, the same can be allowed.

17. Finally, the following amendments are allowed to be carried out in the suit :

- 1) Seeking deletion of defendants 4 and 6.
- 2) Seeking amendment of the plaintiffs' address.
- 3) Seeking addition of details given in Prayer No.4 .
- 4) Seeking correction of typographical errors made in Line Nos.2, 13, 20, 23 and 26 of Paragraph No.4 and addition of details given in Prayer No.5.

5) Seeking correction of typographical errors made in Line Nos.2 and 15 of Paragraph No.5.

6) Seeking correction of typographical errors made in Line Nos.2, 4, 22 and 29 of Paragraph No.6, incorporation of Document Nos.437 & 438 of 2009 of Paragraph No.6.

7) Seeking correction of date as 11.09.2007 in Line No.2 of Paragraph No.7, correction of name as R.Balakrishnan in Line No.5 of Paragraph No.7, correction of word "defendant" as "plaintiff" in Line No.19 of Paragraph No.7, correction of typographical errors made in Line Nos.13, 15, & 44 of Paragraph No.7, addition of details given in Prayer No.8 in Paragraph No.7.

8) Seeking correction of property details in Item No.1 as "276E" instead of "276E"

18. In the result, this Civil Revision Petition is partly allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed. Since the suit is of the year 2009, the learned counsel for the plaintiffs are directed to file the amended plaint on or before 23.12.2020. The defendants will have to file additional written statement within 30 days from the date of filing of the amendment plaint.

Sd/-

Assistant Registrar

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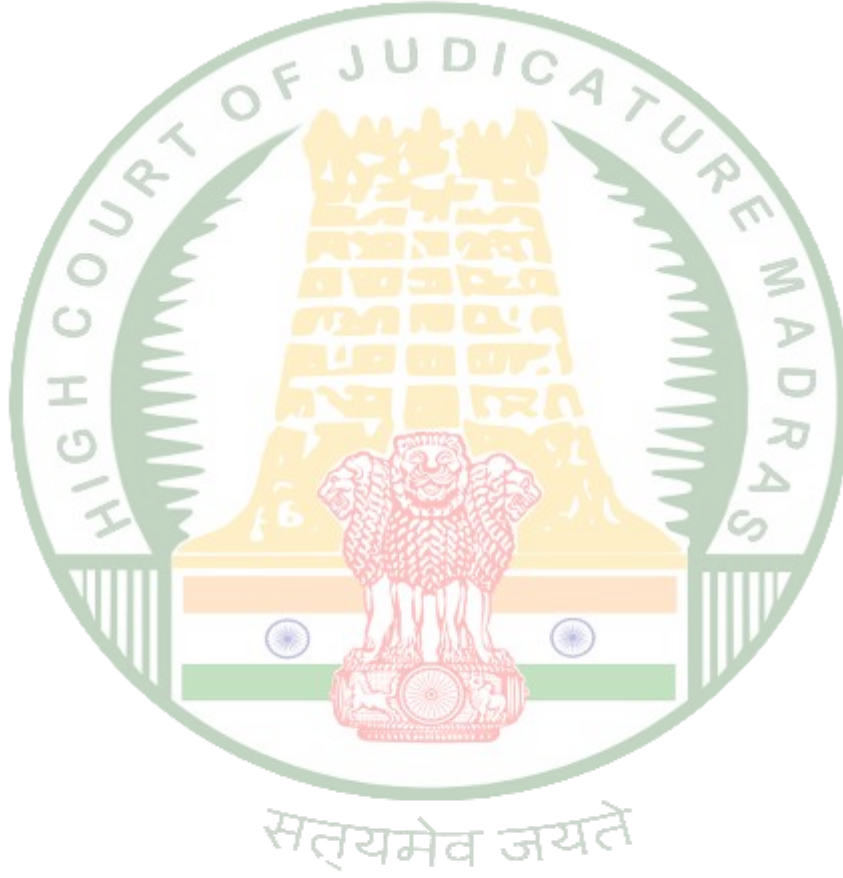
Sub Assistant Registrar

To
The District Munsif, Udumalpet.

+1cc to M/s.A.Sundaravadhanan, Advocate, S.R.No.35388

C.R.P.No.2912 of 2018
and
C.M.P.No.17023 of 2018

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