

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[ORDERS RESERVED ON : 09.12.2020]

[ORDERS PRONOUNCED ON : 14.12.2020]

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP (PD).No.2107 of 2020

and

C.M.P.No.13285 of 2020

A.Rajasekar

....Petitioner

.. Vs ..

- 1.A.Parameswari
- 2.Vijayakumar
- 3.Sudha
- 4.E.M.Manoharan
- 5.S.Parameswaran
- 6.Sitheewaran
- 7.K.P.Selvaraj
- 8.Sivagami
- 9.V.R.Sathyapriya
- 10.S.R.Sangeetha
- 11.P.Saritha
- 12.R.Subramanian
- 13.P.S.Nandhini
- 14.N.G.Sivanathan
- 15.S.N.Sengottaiyan
- 16.S.Bharathi

... Respondents

PRAYER: Petition filed under Section 227 of Constitution of India, praying to set aside the fair and decreetal order dated 06.10.2020 in I.A.No.4 of 2020 in O.S.No.20 of 2020 on the file of the Subordinate Judge, Gobichettipalayam.

For Petitioner : Mr.N.Mariappan

For Respondents : Mr.T.Murugamanickam, Senior Advocate
for Mr.D.R.Arun Kumar

JUDGMENT

The plaintiff is the Revision Petitioner herein.

2. The petitioner/plaintiff filed a suit for declaration to declare the settlement to be executed by his father in favour of the step mother and the step sister as null and void and consequently for a relief of partition and for separate possession.

3. In the above suit, a written Statement was filed on behalf of the respondents/defendants. In the trial, the plaintiff side examination is over and on the defendant side DW1, DW2, DW3, DW4 and DW5 are examined and cross examination of DW5 is partly over. The case is now posted for further cross examination of DW5. At this juncture, the plaintiff had filed I.A.No. 4 /2020 to amend the prayer and to include the sale deeds dated 16.09.2004 and 13.09.2004 as null and void.

4. The reason assigned for amendment is that DW1, first defendant, second wife of the father of the plaintiff while cross examination has admitted that, land to an extent of 4.5 Acres in Siruvallur village was purchased by her and her husband in her name. Based upon the answer spoken to the cross examination of DW1, the present application is filed to include those two sale deeds in this suit schedule of the property and also for relief of declaration of the sale deeds dated 16.09.2004 and 13.09.2004 as null and void.

5. Heard, the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

6. The proposed amendment now sought for is to include the sale deeds dated 16.09.2004 and 13.09.2004 purchased in the name of the first defendant and her husband in her name.

7. The learned Senior Advocate, Mr.Murugamanickam on behalf of the respondents could contend that the two sale deeds are of the year 2004, the prayer itself is barred by limitation since 16 years have lapsed. The said property standing in the name of the first defendant is a separate property. The first defendant and her husband have purchased the property does not mean that it was purchased from and out of the income of the husband of the first defendant.

8. After perusing the order passed by the Trial Court, it is seen that the oral evidence on the side of the petitioner is over and since the suit was pending from the year 2008 there was an order passed by this Court for completion of the trial in time bound frame. On the side of the defendants, DW1 to DW5 were examined, it is formally posted for the cross examination of DW5. At this juncture, this application is filed for amendment of the plaint to include two sale deeds of the year 2004.

Admittedly, those two sale deeds are standing in the name of the first defendant. The property purchased in the name of the first defendant, being a women is separate property. She is the second wife of the father of the plaintiff. Admittedly, after the death of the mother of the plaintiff, the father married the first defendant and begotten defendants 2 & 3. A sale deed is standing in the name of the DW1 and is of the year 2004, a snap answer during the cross examination DW1 does not title the property as that the father of the plaintiff.

9. The main prayer in the suit is to declare the settlement deed executed by the father of the plaintiff in favour of the defendants 2 & 3 as null and void and partition those properties. By way of amendment, new cause of action is having sought to be introduced, namely, to set aside the sale deed of the year 2004 standing in the name of the first defendant. The original cause of action and original subject matter is now proposed to be changed, any amendment of plaint without changing original cause of action or original subject matter and nature and character of the original suit can be allowed. However, in the instant case, the petitioner wants to introduce new cause of action challenging

the sale deed in the name of the first defendant. Having purchased the property in her name, a snap answer in DW1 examination cannot be a ground to introduced that property is a suit property. It is not the case of the plaintiff now that the plaintiff wanted fish from the new cause of action from the snap answer during the cross examination of DW1. In my considered view, it will amount to new cause of action and different cause of action and hence through proposed amendment, plaintiff wants to introduce the new case in the suit, in which issues are completed, the evidence have also been completed and the matter is in the stage of the closure of the defendants' side evidence.

10. In the result, this Civil Revision Petition fails and the same is hereby dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

14.12.2020

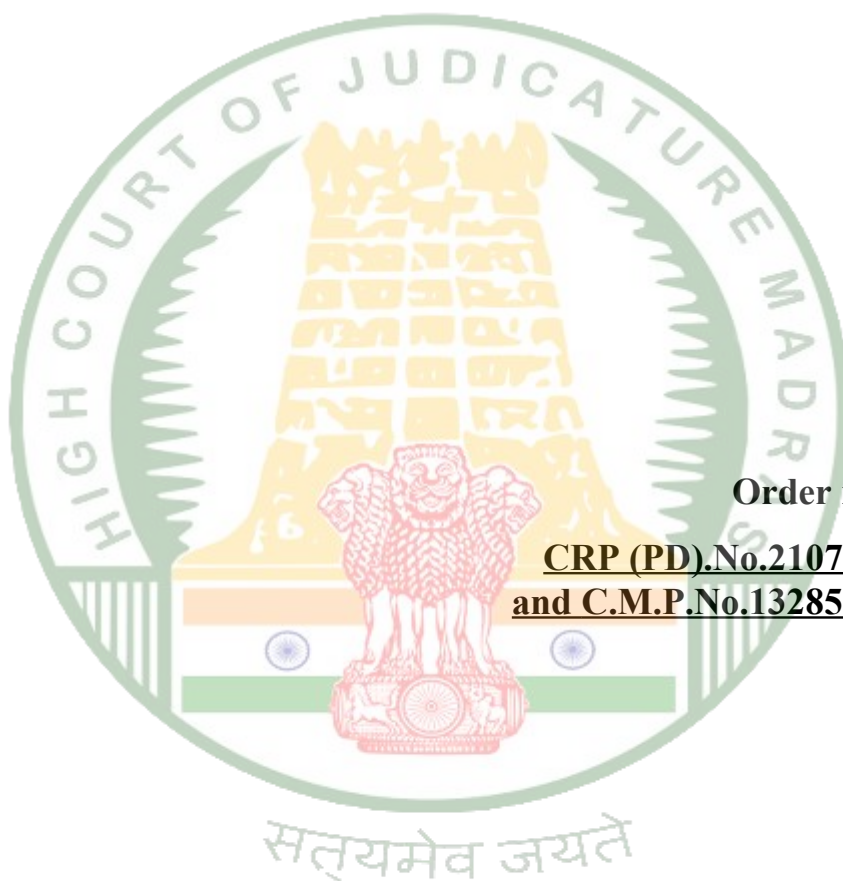
Internet :Yes
mtl

To

The Subordinate Judge,
Gobichettipalayam.

RMT.TEEKAA RAMAN, J.

mtl



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