

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 12.02.2020

ORDER PRONOUNCED ON : 20.02.2020

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P.(PD) No.5024 of 2014

and

M.P.No.1 of 2014

1.Achuthan

2.Bavani

3.Maharajan

4.Mirnalini

[The petitioners 2 to 4 are represented by
their father & Power of Attorney 1st petitioner-
Achuthan]

... Petitioners

...Versus...

1.Rajaram

2.Rajasekaran

3.The District Registrar,
Registration Department,
Sakthi Nagar, Saram,
Puducherry

4.The Thirukkanur Sub-Registrar,
Office of the Sub-Registration Department,
Thirukkanur, Puducherry

... Respondents

PRAYER: This Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the order and decretal order dated 19.09.2014 made in I.A.No.94 of 2013 in O.S.No.3 of 2012 on the file of the Court of the III Additional District Judge at Puducherry.

For Petitioners :: Mr.R.Krishnaprasad
For R1 :: No appearance
For R2 :: Mr.K.V.Sundararajan
For R3&R4 :: Mrs.G.Djearany,
Government Advocate
(Pondicherry)

ORDER

The plaintiffs in the suit O.S.No.3 of 2012 are the revision petitioners herein.

2. The revision petitioners have filed a suit in O.S.No.3 of 2012 seeking for declaration to declare the settlement deed as null and void; for permanent injunction in respect of defendants 1&2; another permanent injunction in respect of the respondents 3&4; for partition of the suit property and delivery of 1/3rd share to the plaintiffs, wherein,

the defendants have filed written statement alleging that the alleged settlement is known to the plaintiffs and the suit is barred by limitation. While so, I.A.No.94 of 2013 was filed by the plaintiffs to amend the plaint in O.S.No.3 of 2012 to include another alleged settlement and also to declare consequential sale deed as null and void. The said I.A was resisted by the defendants raising the plea that the same is barred by limitation and alter the basic structure of the suit property and I.A.No.94 of 2013 was dismissed and hence, the Civil Revision Petition.

3. Heard the learned counsel for the petitioners and the respondents and perused the records.

4. The suit was originally filed for the relief of partition and separate possession of 1/3rd share of the property and also to declare the settlement deed dated 15.03.1994 executed by the Tmt.Anandhavalli in favour of the second defendant is null and void and non-est in law and for permanent injunction in respect of the suit property.

5. Pending suit, he has filed an Interlocutory Application No. 27 of 2012 for interim injunction in respect of various properties and by an order dated 09.10.2012 the learned Additional District Judge, Puducherry has granted interim injunction only in respect of certain

properties and refused to grant injunction in respect of other properties on various reasons including that they are self-acquired properties of the second defendant, that are included as if it is a family property and above ground that the claim made by the plaintiff is barred by limitation. Against the order in I.A.No.27 of 2012, the petitioner herein has preferred C.M.A.No.508 of 2013 and the same was dismissed by this Court on 18.03.2013.

6. Now by way of amendment in the I.A, it is pleaded that one Thiruvengada Gounder was the absolute owner and possessor of the suit property and the settlement deed executed on 15.03.1994 in favour of the second defendant is null and void as such, the date of knowledge is averred for the period of limitation. Now, by way of amendment, the petitioners are trying to challenge the settlement deed which is admittedly time barred by more than 12 years. The petitioners wanted to include certain properties which are self-acquired properties of the defendant under guise of suit for partition and they wanted to challenge the sale deed of the year 2006 and also they wanted to challenge the sale in favour of the son. Furthermore, taking note of these facts, the trial Court has dismissed the I.A.

7. It is to be stated that by way of amendment he seeking to set aside the sale deed of the year 2006 and 2009 which is duly reflected in the Encumbrance Certificate. No explanation or reason has been assigned for such amendment. Furthermore, on the date of the filing of the suit, the above documents are duly registered in the Sub-Registrar office. While so, it is needless to say that under Order 2 Rule 2 C.P.C. he ought to have filed a comprehensive suit and with view to get over embargo under Order 2 Rule 2 C.P.C he cannot file an amendment application to adopt this method of amendment indirectly. The relief now sought for is totally barred by limitation.

8. Following the decision of the Hon'ble Supreme Court reported in (2010) 14 SCC 596 (Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit (Registered) Vs.Ramesh chander and others) has held as follows:-

"32. Even though the prayer for amendment to include the relief of specific performance was made about 11 years after the filing of the suit, and the same was allowed after 12 years of the filing of the suit, such an amendment in the facts of the case cannot relate

back to the date of filing of the original plaint, in view of the clear bar under Article 54 of the Limitation Act. Here in this case, the inclusion of the plea of specific performance by way of amendment virtually alters the character of the suit, and its pecuniary jurisdiction had gone up and the plaint had to be transferred to a different Court. This Court held in Vishwambhar v.Laxminarayan, if as a result of allowing the amendment, the basis of the suit is changed, such amendment even though allowed, cannot relate back to the date of filing the suit to cure the defect of limitation (SCC at pp.168-69, para 9). Those principles are applicable to the present case."

and (ii) Following the decision of this Court reported in 2017(6) CTC 596 (Joseph Arokoados, rep by Power Agent, T.Kasi Vs.P.Pradeep) has held as follows:-

"17. Admittedly in the case on hand, the respondent has admitted that the Revision Petitioner was in actual and physical possession in the year of 2008, in such circumstance the Respondent should have sought for relief of Declaration and Recovery of

possession at the very point of filing his suit in the year 2008 itself. Whereas, the Respondent was not due diligent in claiming appropriate relief, it would be precise to say that the Respondent omitted to include a larger relief. Such omission would amount to relinquishment of his claim, which is barred by Order 2, Rule 2 of C.P.C."

9. On the factual scenario as discussed supra and also taking note of the fact that when all the settlement deeds are registered documents he ought to have filed the suit for possession on or before 15.03.2006 and amendment to such a relief ought to have been filed before 18.01.2013 and hence, the trial Court has rightly dismissed the I.A and hence, this Civil Revision Petition is devoid of merits.

10. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected M.P is closed.

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Index:Yes/No
Internet:Yes/No
Speaking Order:Yes/No

To

The III Additional District Judge at Puducherry.

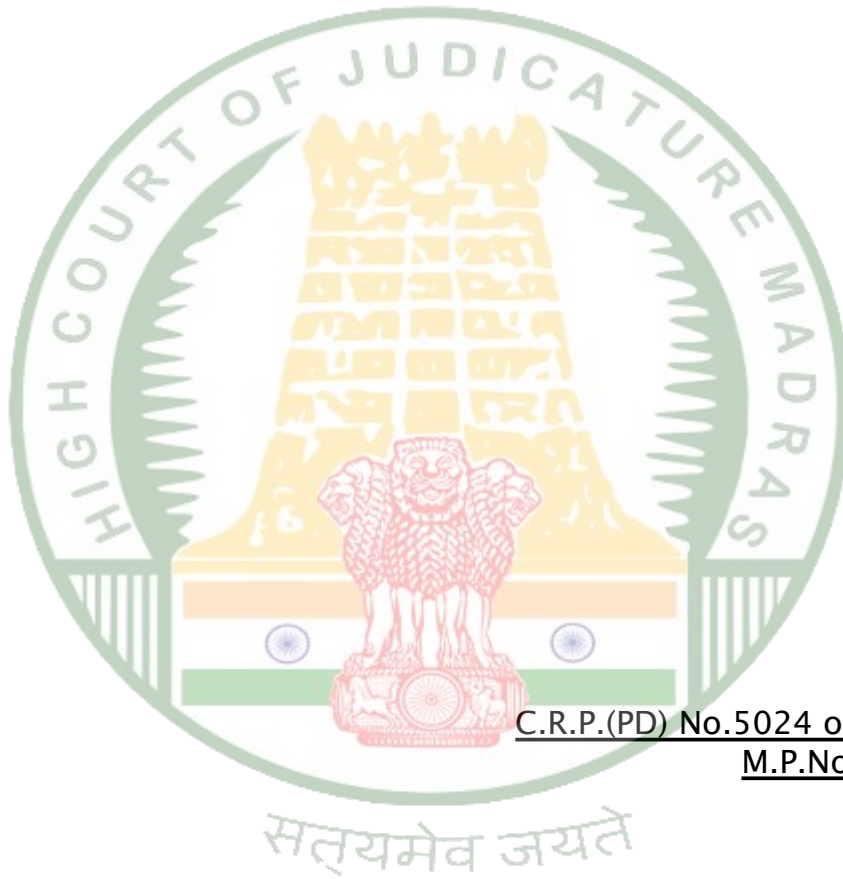


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