

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.08.2020

:CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.R.P(PD) .Nos.2906 and 4237 of 2017
and
C.M.P.No.13749 of 2017

C.R.P(PD) No.2906 of 2017

1. A.Sundaram

2. V.S.Vijay ...Petitioners/Plaintiffs/Petitioners

.Vs.

Appa Gounder (died)

1. A.Gunasekaran

2. G.Krishnaveni

3. G.Guhan

4. Sathya Saravanan

...Respondents/Defendants 2 to 5/Respondents 1 to 4

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decretal Order dated 17.06.2017 passed in I.A.No.56 of 2016 in O.S.No.72 of 2013 on the file of Additional District Judge, Erode District at Bhavani, in so far as relates to partly dismissing the I.A.

CRP(PD) No.4237 of 2017

1.A.Gunasekaran

2. G.Krishnaveni

3. G.Guhan

4. Sathya Saravanan

...Petitioners/Defendants 2 to 5/ Respondents

.Vs.

Appa Gounder (died)

1. A.Sundaram

2. V.S.Vijay

...Respondents/Petitioners/Plaintiffs

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decreetal Order dated 17.06.2017 passed in I.A.No.56 of 2016 in O.S.No.72 of 2013 on the file of Additional District Judge, Erode District at Bhavani, in so far as it is against this petitioners.

For Petitioner : Mr.K.Goviganesan
(in both CRP's) For Petitioner in CRP(PD) 2906/2017
and Respondents in CRP(PD) 4237/2017

For Respondent : Mr.T.Murugamanickam
(in both CRP's) for Ms.Zeenath Begum for
Respondents in CRP(PD) 2906/2017
and Petitioner in CRP(PD) 4237/2017

C O M M O N O R D E R

The petitioners in C.R.P.(PD) No.2906 of 2017 filed a suit against the petitioners in C.R.P.(PD)No.4237 of 2017 in O.S.No.72 of 2013 and one Appachi Gounder (the respondent in both C.R.P's), on the file of Additional District Judge IV, Bhavani. After filing the written statement during trial, the petitioner herein filed I.A.No.56 of 2016 to amend the plaint. Thereafter, considering the oral and documentary evidence, the trial Court partly allowed the application. The petitioners in C.R.P.(PD) No. 2906 of 2017 has filed this Revision

challenging the dismissal portion of the said order. The petitioners in C.R.P.No.4237 of 2017 filed the revision challenging the said order, in respect of the petitioners alone.

2. Since both the Civil Revision petitions arising out of the single order, both the CRP's are heard together and common order is passed.

3. The learned counsel for the petitioners in C.R.P.(PD) No.2906 of 2017 would submit that they filed a suit for partition and separate possession in O.S.No.72 of 2013, in which

a written statement was filed by Appachi Gounder, the deceased first defendant and the father of the petitioners in CRP.No.2906 of 2017. After the death of their father the petitioners filed an application to amend the plaint as follows:

"1. The petitioners want to add the word "died" after the name of the 1st defendant both in long cause title and short cause title.

2. The petitioners want to incorporate two new prayers seeking declaration to declare the sale deed dated 18.01.2012 (Document No.226/2012 on the file of Sub Registrar, Bhavani) is not binding on the 1st plaintiff since it is void and declaration to declare the settlement deed dated 30.01.2012 (Document No.416/2002 on the file of Sub Registrar, Bhavani) is not binding on the 1st plaintiff since it is void.

3. The petitioners want to alter the proportion of the share of 1st petitioner/1st plaintiff in respect of item 6, 7 and 8 of suit property from 1/3, 1/6 and 1/3 respectively to 1/2 share in all the 3 items due to the death of the 1st defendant.

4. The petitioners want to include 3 more item of properties in the suit schedule as item No.13,14, and 15."

4. The learned Judge allowed the amendments 1,3 and 4 and dismissed the third amendment sought for.

5. The learned counsel for the petitioners in C.R.P.No.2906 of 2017 would submit that initially the first respondent/first petitioner in C.R.P.No.4237 of 2017 obtained a Sale deed dated 18.01.2012 concerning the self acquired property of the father of the first petitioner (first respondent in C.R.P.No.4237 of 2017) which was acquired by him under sale deed 11.09.1995 in favour of his son A.Guhan. Besides, the second respondent/second petitioner in Crp.No.4237 of 2017 obtained a settlement deed dated 04.06.2012 in favour of his son i.e, the third respondent/third petitioner in C.R.P.No.4237 of 2017 concerning the property allotted to the father of the first petitioner/first respondent in C.R.P.No.4237 of 2017 under partition deed dated 10.03.1972 and also property purchased by him under sale deed dated 28.12.1994. The first respondent/

first petitioner in C.R.P.No.4237 of 2017 obtained a nominal sale deed 18.01.2012 under Doc.No.225/2012 SRO Bhavani in favour of his wife and daughter-in-law, who are the defendants 3 & 5 concerning item 15 of the suit properties and other properties. When the petitioners in C.R.P.No.2906 of 2017 came to know that these documents are forged, they wanted to declare the sale deed dated 18.01.2012 (Document No.226/2012 on the file of Sub Registrar, Bhavani) is not binding on the 1st plaintiff since it is void and declaration to declare the settlement deed dated 30.01.2012 (Document No.416/2002 on the file of Sub Registrar, Bhavani) is not binding on the 1st plaintiff since it is void. Since the amendment sought for is in pre-trial stage, the Court can very well liberally allow the amendments sought for and after allowing the amendment the respondents can be given opportunity to file written statement and suitably issues can be framed and hence the learned counsel for the petitioners in Crp.no.2906 of 2017 prays to allow the revision.

6. The learned counsel for the respondents in C.R.P.No.2906 of 2017/petitioners in C.R.P.No.4237 of 2017 would submit that so far as second item of the relief sought for in the amendment application is concerned, the petitioners in C.R.P.No.2906 of 2017 have disputed the validity of sale deeds, release deed etc., made by the first defendant regarding the properties other than items 1 to 5. They are the properties described as item 6 to 9a and 10. In all these items of the properties, the deceased first defendant has already alienated his share to the petitioners 1 to 3 in CRP.No.4237 of 2017 and the said fact was admitted by the petitioners in CRP.No.2906 of 2017 in the plaint itself and therefore the first petitioner in CRP.No.2906 of 2017 is not entitled to claim additional share in those properties as legal and such a claim is barred by limitation. Further, the petitioners in C.R.P.No.2906 of 2017 cannot seek declaration that the sale deed dated 18.01.2012 (D.No.226/2012) item 13 of the petition mentioned property and settlement deed dated 30.01.2012 (D.No.416/2012) item 14 of the petition mentioned properties are invalid and he would submit that the order passed by the trial Court is right in rejecting the second amendment sought for by the petitioners in CRP.No.2906 of 2017. However, he would submit that the learned Judge having found that the declaratory relief sought for in respect of items 13 and 14 are barred by limitation, ought not have allowed the addition of item nos. 13 to 15 as properties in the suit. He would further submit that adding of item 13 to 15 can only be a consequence of a declaratory relief. In this case, when the declaratory relief has been dismissed, then the consequential prayer for inclusion of these items as being liable for partition, cannot be maintained. Hence, he prays to allow the Revision in CRP.No.4237 of 2017 by setting aside the order in

I.A.No.56 of 2016 in O.S.No.72 of 2013 dated 17.06.2017.

7. Heard both sides. Perused the records.

8. The admitted case of the parties that the petitioners in C.R.P.2906/2017 filed a suit against the respondents/petitioners in Crp.No.4237 of 2017 for partition and separate possession. Subsequently, after the death of their father, they filed application in I.A.No.56 of 2016 for seeking certain amendments in the plaint as stated supra. So far as the first amendment sought for in the plaint, there is no dispute and the third amendment with regard to the alteration of proposition of the share is also not disputed. Only the second and the fourth amendments are disputed. As far as the second amendment sought for is concerned, according to the first plaintiff, he has come to know of the execution of the sale deed and settlement deed only on the later stage and therefore, the pre trial amendment can be liberally allowed but however on a reading of a plaint, even in the written statement filed by the deceased first defendant, he has clearly stated in his submission regarding the execution of these documents admittedly during his life time, the plaintiffs cannot say that they came to know of the execution of these documents at the later stage. Further, the copy of the sale deed and the settlement deed were filed in the suit and the petitioners in Crp.no.2906 of 2017 has admitted the said fact. Further, when the said documents were produced before the trial court on 30.04.2013, the petitioners ought to have filed the amendment application within three years, but the amendment application was filed only on 05.10.2016 and therefore the Court below has rightly rejected the said amendment by observing that the same is barred by limitation. Hence, this Court does not find any perversity in the order passed by the trial Court regarding the second item of the amendment petition and hence C.R.P.Nos.2906/2017 is dismissed.

9. As far as C.R.P.(PD)No.4237 of 2017 is concerned, it is stated by the learned counsel for the petitioners that as far as item nos.13 and 14 are concerned, item 13 is covered in the Sale Deed dated 18.01.2012 and the item no.14 covered under the settlement deed 30.01.2012 and therefore they should not be added as suit properties. He would further submit that when there is no declaration sought for to set aside the sale deed dated 18.01.2012, in respect of item 15, then the trial court ought not to have been included this item for division.

10. Considering the aforesaid submissions made, the order passed by the trial Court is set aside in respect of inclusion of item nos.13 and 14. In respect of inclusion of item No.15 is concerned, the said issue can be decided after recording the evidence in the trial.

11. In the result, the C.R.P.(PD) No.2906 of 2017 is dismissed and C.R.P.(PD)No.4237 of 2017 is partly allowed. Consequently, connected C.M.P. is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

arr

To

The Additional District Judge,
Erode District at Bhavani.

+2cc to Mr.K.Govi Ganesan, Advocate, S.R.No.27166 & 27167

CRP (PD) Nos.2906 and 4237 of 2017

NRJK (CO)
RN (06/11/2020)

WEB COPY