

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.3390 of 2017

1.Suseela @ Nirmala Mary

2.E.Peter Prabakaran.

.. Petitioners

Vs.

1.D.R.Lurthusamy

2.L.Sagayaraj

3.L.Leo Stalin Raj

4.D.R.Anthonysamy

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of Constitution of India praying to set aside the fair and final order dated 03.07.2017 made in I.A.No.108 of 2017 in O.S.No.71 of 2015 on the file of the Principal District Court, Vellore.

For Petitioners : Mr.K.Venkatasubban
for M/s.Sarvabhauman Associates

For Respondents : Mr.V.P.Raju
for M/s.R.R.Associates

ORDER

The matter is heard through Video Conferencing.

2. This Civil Revision Petition is filed to set aside the fair and final order dated 03.07.2017 made in I.A.No.108 of 2017 in O.S.No.71 of 2015 on the file of the Principal District Court, Vellore.

3. The petitioners are the plaintiffs and respondents are the defendants in O.S.No.71 of 2015 on the file of the Principal District Court, Vellore. The petitioners filed the said suit for declaration and injunction. The respondents 1 to 3 filed written statement on 16.01.2016 and the 4th respondent filed written statement on 20.08.2016 and contested the suit. The suit was posted for trial. The petitioners filed I.A.No.108 of 2017 to amend the plaint to include the relief of declaration that sale deed dated 13.04.2007 executed by the 1st respondent in favour of the 4th respondent as null and void and to declare the settlement deed dated 12.02.2003 executed by the 1st respondent in favour of the respondents 2 and 3 as null and void and also to amend the two items of properties as 'B' and 'C' schedule. The respondents filed counter affidavit and opposed the same. The learned Judge, after hearing the petitioners and respondents, dismissed the petition.

4. Against the said order of dismissal dated 03.07.2017 made in I.A.No.108 of 2017 in O.S.No.71 of 2015, the petitioners have come out with the present Civil Revision Petition.

5. The learned counsel appearing for the petitioners contended that the petitioners are absolute owner of suit property and they are in possession and enjoyment of the suit property. The respondents interfered with possession and enjoyment of the petitioners and after issue of notice, the petitioners filed suit for declaration of title and injunction. By mistake and over sight, the petitioners did not include the prayer to declare the documents created by the respondents as null and void. The learned Judge failed to see that the petitioners have to give explanation that fabricated documents of sale deed and settlement deed is null and void, otherwise third party interest would be intervened. The learned Judge failed to consider that amendment sought for does not change the cause of action and nature of the suit. The amendment is necessary for proper adjudication and to avoid multiplicity of the proceedings and prayed for allowing the Civil Revision Petition.

6. Per contra, Mr.V.P.Raju, the learned counsel appearing for the

respondents contended that 1st respondent is the owner of the suit property originally mentioned in the plaint as well as two other properties now sought to be included. The petitioners issued notice through their counsel before filing the suit and in the reply sent to the notice, it has been mentioned about title of the 1st respondent and the sale deed of the year 2007 and settlement deed of the year 2013. The respondents have also given the details of sale deed and settlement deed along with written statement in January 2016 itself. The trial commenced. Now by amendment, the petitioners are including two other properties and introducing new cause of action. By the amendment now sought for, the value of the suit increases and nature of the suit also completely changes. The reason given by the petitioners for not seeking the relief now sought for at the time of suit itself is without merits. By amendment, the petitioners are introducing new cause of action and prayed for dismissal of the Civil Revision Petition.

7. Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondents and perused the entire materials on record.

8. The petitioners have filed suit for declaration and injunction against the respondents in respect of property mentioned in the schedule to the plaint. In the written statement filed by the respondents 1 to 3 on 16.01.2016 and separate written statement filed by the 4th respondent on 20.08.2016, the respondents have denied the title of the petitioners and mentioned about the sale deed and settlement deed. In the written statement filed by the respondents 1 to 3 on 16.01.2016, they have enclosed the details of documents. In the counter affidavit filed by the 4th respondent, in the reply given to the pre-suit notice, he has mentioned the documents now sought to be declared as null and void. The said contention was not denied by the petitioners and the learned counsel appearing for the petitioners also submitted that in the pre-suit notice, the respondents have mentioned the present sale deed and settlement deed and by mistake and oversight, they have not sought for the present relief to declare the sale deed and settlement deed as null and void.

9. As rightly pointed out by the learned counsel appearing for the respondents, the petitioners are seeking to introduce new properties and new cause of action and the relief now sought for, changes the nature of the suit

and the reason given by the petitioners for not including the properties and the relief now sought for is not valid and acceptable. In view of the above, there is no reason to interfere with the order of the learned Judge.

10. In the result, the present Civil Revision Petition is dismissed. No costs.

22.09.2020

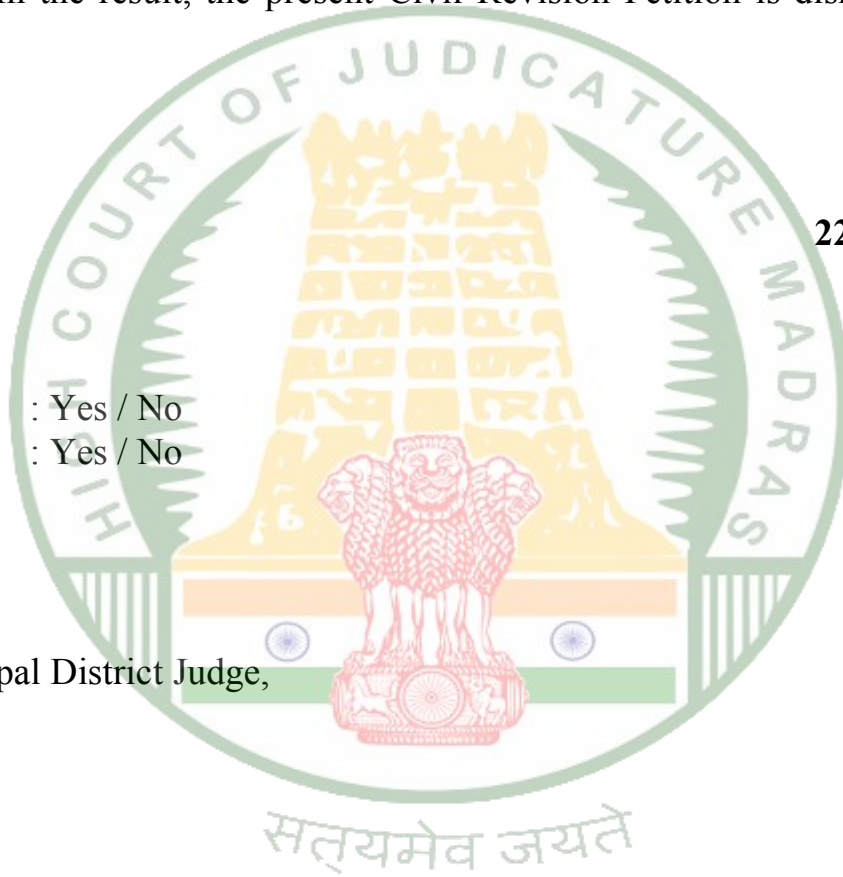
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Index : Yes / No

Internet : Yes / No

To

The Principal District Judge,
Vellore.



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V.M.VELUMANI, J.

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