

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.09.2020

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.R.P. (PD). No. 770 of 2017
and C.M.P. No. 3831 of 2017

H. Radu Rex Robaria (Died)

1.D. Helan

2.J. Anitha Santhalain

3.Manual Joshua

4.L. Prema

5.R. Aaseer Chrisopher

6.R. Blessy Udayakumari

7.R. Eather Vijaya

...Petitioners

Vs

Mrs. J. Suguna Charlottee (Deceased)

1.Mrs. Rebacca Rajakumari

2.Mrs. Roslin Darkas Udayarani

...Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order passed in I.A.No.2808 of 2016 in O.S. No.5737 of 2009 on the file of the XII Assistant City Civil Court, Chennai dated 29.08.2016.

For Petitioners : Mr.C.K.M.Appaji

For Respondents : Mr.S.Packiaraj

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order passed in I.A. No. 2808 of 2016 in O.S. No. 5737 of 2009 on the file of the XII Assistant City Civil Court, Chennai dated 29.08.2016.

2. The parties are referred to as per their rank in the suit, for the sake of convenience.

3. The plaintiffs filed O.S. No. 5737 of 2009 for declaration, declaring the settlement deed executed by the 1st defendant in favour of the defendants 2 and 3 in Document No. 20 of 2009 on the file of the District Registrar, South Madras, dated 19.01.2009 as null and void, to grant permanent injunction restraining the defendants from alienating or encumbering the schedule property and for mandatory injunction directing the defendants to quit and hand over the vacant possession of the schedule property, stating that

they have acquired title by the release deed dated 02.07.1996, executed by the father of the 1st plaintiff. The defendants filed written statement and are contesting the suit. Trial commenced. The plaintiffs let in evidence and closed their side. The defendants examined witnesses and the suit was posted for further evidence on behalf of the defendants. At this stage, the plaintiffs filed I.A. No.2808 of 2016 for amendment of the plaint stating that the larger extent of suit property belonged to their grandfather viz., Gnanaprakasam who purchased the same by the deed of sale dated 09.05.1931 bearing Doc. No. 618/1931. He executed the settlement deed dated 30.05.1968 settling life interest on his son Henry Jabamani and thereafter absolutely on his three grand sons viz., Joshua Rudge Paramanandam, Exon Jesudasan and Raud Rex Roberio by settlement deed bearing Doc. No.921 of 1968. The 1st plaintiff is the grand son of Gnanaprakasam and other plaintiffs are the legal heirs of other two grand sons. By over sight, the sale deed dated 09.05.1931 and the settlement deed dated 30.05.1968 were not mentioned in the plaint and failed to make averments in the plaint about the sale deed and settlement deed. They have marked the sale deed dated 09.05.1931 and settlement deed

dated 30.05.1968 as Exs.A1 and A12, when the plaintiffs were examined. Only when the suit was posted for further evidence on behalf of the defendants, they consulted Senior Counsel, who pointed out non-mentioning of sale deed and settlement deed and advised for amendment of plaint. The plaintiffs submitted that by inadvertence, they did not make averments with regard to sale deed and settlement deed and in spite of due diligence, they could not file the petition for amendment before commencement of trial. The failure to mention the document is neither wilful nor wanton.

4. The defendants filed counter affidavit stating that by amendment now sought for, the plaintiffs are introducing new cause of action and are changing the entire character of the suit. The reason given by the plaintiffs for not filing the petition for amendment earlier is not valid and prayed for dismissal of the petition.

5. The learned Judge considering the averments in the affidavit, counter affidavit and arguments of the counsel for the parties, dismissed the petition.

6. Against the said order of dismissal dated 29.08.2016 in I.A.No.2808 of 2016 in O.S. No.5737 of 2009, the plaintiffs have come out with the present petition.

7. The learned counsel appearing for the plaintiffs made submissions reiterating the averments made in the affidavit filed in support of the petition and further submitted that the learned Judge failed to see that they have given valid reason for delay in filing the petition for amendment. The learned Judge is not correct in holding that the plaintiffs slept over for 7 years. The learned Judge ought to have allowed the application. The learned Judge erred in holding that the amendment now sought for, changes the character of the suit and amounts to miscarriage of justice and prayed for allowing the petition.

8. Mr.S.Packiaraj, learned counsel appearing for the defendants reiterated the averments made in the counter affidavit and further submitted that the learned Judge has given valid reason for dismissing the application. There is no error in the said order warranting interference by this Court and prayed for dismissal of the revision petition.

9. Heard the learned counsel appearing for the plaintiffs as well as the defendants and perused the materials available on record.

10. From the materials on record, it is seen that the plaintiffs have filed a suit for declaration stating that the property belongs to their father Henry Jebamani, who by the deed of release dated 02.07.1996, released the property in favour of the 1st plaintiff and two other sons on receiving Rs.60,000/-. The defendants filed written statement and denied all the averments in the plaint. Trial commenced and after plaintiffs closed their evidence and when the suit was posted for further evidence on behalf of the defendants, the plaintiffs have come out with the present petition for amendment. From a reading of the affidavit filed in support of the said petition, it is clear that the plaintiffs were tracing their title through their grand father viz., Gnanaprakasam, who purchased the same by the sale deed dated 09.05.1931 and settled the property in favour of his grand sons by settlement deed dated 30.05.1968. By this amendment, the plaintiffs are introducing a new cause of action and a

new case. After commencement of trial, the Courts can allow amendment only if parties establish that inspite of due diligence, they could not file the petition for amendment before commencement of trial. In the present case, the reason given by the plaintiffs for not filing the petition for amendment before commencement of trial is not valid and acceptable. The learned Judge has properly appreciated all the materials on record and dismissed the application by giving cogent and valid reason. There is no irregularity and illegality in the order passed by the learned Judge warranting interference by this Court.

11. In the result, the Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

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Index: Yes/No

To
The XII Assistant Judge,
City Civil Court,
Chennai.

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V.M.VELUMANI,J.

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