



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2020

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (MD)Nos.1800 of 2019, 51 and 52 of 2020

Kanagam@ Kanagu .. Petitioner/Petitioner/Plaintiff
in all C.R.Ps.

Vs.

M.Periyaiya (Died)
1.P.Panneer Selvam
2.P.Seenivasan .. Respondents/Respondents/Defendants 1 & 2
in all C.R.Ps.

Prayer in C.R.P. (PD) (MD)No.1800 of 2019: This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to call for the records in the fair and decreetal order dated 24.04.2019 in I.A.No.5 of 2019 in O.S.No.44 of 2011 passed by the District Munsif Court, Devakottai and to set aside the same.

Prayer in C.R.P. (PD) (MD)Nos.51 and 52 of 2020: This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to call for the records regarding the fair and decreetal order dated 08.11.2019 in I.A.Nos.11 and 12 of 2019 in O.S.No.44 of 2011 passed by the District Munsif Court, Devakottai and to set aside the same.

For Petitioner : Mr.V.Perumal

For Respondents : Mr.M.Sanjay

COMMON ORDER

C.R.P. (PD) (MD)No.1800 of 2019 has been filed against the order passed in I.A.No.5 of 2019 in O.S.No.44 of 2011 dated 24.04.2019, on the file of the learned District Munsif, Devakottai.

2.C.R.P. (PD) (MD)Nos.51 and 52 of 2020 was filed against the order passed in I.A.Nos.11 and 12 of 2019 in O.S.No.44 of 2011 dated 08.11.2019, on the file of the learned District Munsif, Devakottai.



3.The petitioner herein is the plaintiff and the respondents herein are the defendants 1 and 2 in the suit. The petitioner herein filed a suit in O.S.No.44 of 2011 for a prayer of declaration of title and for injunction. In that suit, the petitioner herein filed a petition in I.A.Nos.11 and 12 of 2019 and 5 of 2019 seeking permission to amend the suit, to re-open the trial and to mark a document dated 07.08.2002. All the petitions were dismissed by the trial Court. Against which, the petitioner has filed this revision petitions.

4.The brief substance of the application in I.A.No.5 of 2019 is as follows:

The petitioner is the husband of the plaintiff and the plaintiff was not able to understand the questions and answer properly at the time of trial and the petitioner was examined as P.W.1. The petition to receive document was allowed by this Court and the case was posted for filing additional proof affidavit. Even at the time of filing of the suit, the unregistered sale deed dated 07.08.2002 executed by the first defendant in favour of the husband of the plaintiff was filed as document no.1 along with the plaint itself. The document was mentioned in paragraph nos.6 and 7 of the plaint. That document was sent for expert opinion. The expert has given evidence in the case. In the letters prior and subsequent to 07.08.2002, it was mentioned that the suit property was purchased by the petitioner in the name of the first defendant. The letters were marked as evidence but the unregistered sale deed dated 07.08.2002, was not yet marked as a documentary evidence. Hence, permission has to be granted to mark that document.

5.The brief substance of the counter in I.A.No.5 of 2019 is as follows:

The document dated 07.08.2002, is a fraudulent document created by the plaintiff. In the cross examination, it was admitted that the plaintiff's father was not in India at the time of the execution of the document. The signature was sent for expert opinion and the expert has given his opinion that the signature is not that of the first defendant. The expert was examined as a witness and he deposed that the signature is not genuine and hence, the document could not be marked. The petitioner filed a petition for permission to pay the stamp duty and penalty under Section 35 of Registration Act. Though the Court has ordered to pay the stamp duty etc., the petitioner has failed to pay the same. The alleged executor of the document, the first defendant was dead. The alleged purchaser, the plaintiff is mentally affected and the power agent of the plaintiff has deposed that he has no knowledge regarding the execution of the document. The document was alleged to have been executed in the year 2002 and was handed over to the power agent of the plaintiff only on 2004. Stamp duty and penalty was not paid and the petition for payment of stamp duty comes to an end. The document was not properly registered. Already evidence on the side of the



plaintiff was over and only to fill up the lacuna, this petition has been filed at the belated stage.

6.The brief substance of the applications in I.A.No.11 and 12 of 2019 is as follows:

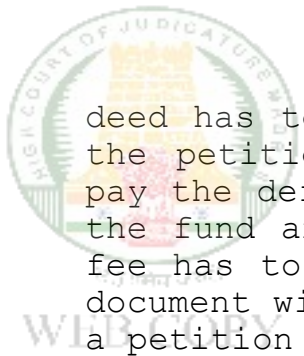
The case was posted for arguments on 04.10.2019. The petitioner was advised to seek additional reliefs. The petition has filed a petition to reopen the trial. On 01.07.1992, the plaintiff's husband has purchased the property in the name of the first defendant. On 21.03.2011, the defendants 2 and 3 tried to create two settlement deeds as if they were executed by the first defendant and they are trying to alienate the suit property. The petitioner was advised to seek a prayer to declare the two settlement deeds as null and void and hence, the petitioner has filed these petitions to amend the suit and to reopen the trial and to mark the unregistered sale deed.

7.The brief substance of the counter in I.A.Nos.11 and 12 of 2019 is as follows:

The power agent of the plaintiff was examined as P.W.1. He has deposed that he was not aware of the document dated 07.08.2002 and he has deposed that he came to the knowledge of the document only on 02.09.2004. Already a petition to reopen the suit was allowed by this Court. For the second time, a petition to reopen the trial has been filed by the petitioner. Even in the plaint in 4th paragraph, the plaintiff has stated that the settlement deed was executed in favour of the defendants 2 and 3 by the first defendant on 23.03.2011. Even in the chief examination of the petitioner, the settlement deeds were mentioned. 9 years after the filing of the suit, the petitioner has come forward with a prayer for amendment. The petitioner has to take steps to cancel the deed within a period of three months from the date of knowledge. In the suit plaint itself, the two settlement deeds were mentioned. After 9 years, when the case was posted for arguments, he cannot sought for a new prayer. It is stated that the signature in the unregistered sale deed dated 07.08.2002 was not that of the first defendant and even after proving that the first defendant was not in India at the time of the unregistered sale deed, the plaintiff still wants to make amendments on the basis of the document. The suit is pending for arguments. Only to drag on the proceedings, the petitioners filed this petitions and that this petitions are to be dismissed.

8.The trial Court after considering both sides, dismissed the petitions. Against which, the petitioner preferred the revision petitions.

9.On the side of the revision petitioners, it is stated that an unregistered sale deed is a supporting document to prove that the petitioner has paid the consideration and purchased the property in the name of the first defendant. The letters of the petitioner's
<https://hcservices.mca.gov.in/hcservices> already marked as plaintiff side documents and the sale



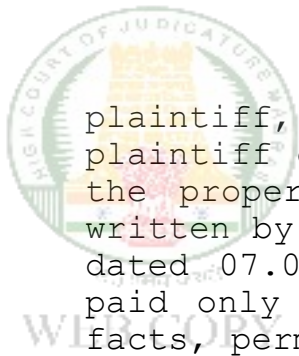
deed has to be marked for the purpose of corroborating the case of the petitioner. The Court has already permitted the petitioner to pay the deficit stamp duty. The petitioner was not able to mobilize the fund and an other opportunity for payment of deficit Court fee has to be given. The denial of permission to mark unregistered document will only cause multiplicity of cases. The petitioner filed a petition for reopening the plaintiff side evidence for proving the petitioner's case. The suit property was purchased in the name of the first defendant by using the funds of the plaintiff's husband when he was working abroad. The petition for amendment of the plaint has been filed to decide the validity of the settlement deeds executed by the first defendant in favour of his sons/respondents herein leaving the daughter/plaintiff.

10.On the side of the respondents, it is stated that the Court has already permitted the petitioner to pay the stamp duty. The petitioner has not taken any steps to pay the stamp duty within the time limit. The petitioner filed a petition in I.A.No.418 of 2012, to permit him to pay the deficit stamp duty. The petition was allowed by the Court on 03.12.2012. The stamp duty was fixed and notice was sent to the petitioner to pay the stamp duty on or before 03.03.2016. Notice was served on the petitioner on 08.02.2016. Only after a lapse of 4 years, the petitioner has approached this Court and the same is not maintainable.

11.The learned counsel for the petitioner would rely upon the judgment passed of the Madhya Pradesh High Court in the case of reported in 2019(1) CCC 194 (M.P.), wherein it is stated as follows:

"Civil Procedure Code, 1908 Order 18 Rule 17 read with Section 151 - recall and reexamination of witness - Tenor of cross examination of plaintiff gives a clear and unambiguous stand of plaintiff that suit property is contained in survey No.52/02 and not survey no 52/01 - with this categorical stand given by plaintiff in regard to identity of suit property there was no occasion for trial Court to have passed impugned order allowing especially when there was no inadvertent mistake or clerical mistake reflected from the testimony - attempt on part of plaintiff in filing application under Order 18 Rule 17 of CPC which calls for interference of this Court by exercise of supervisory jurisdiction - impugned order set aside."

12.On the side of the petitioner, it is stated that due to some financial problems, the petitioner was not able to pay the stamp duty in time and now the petitioner is ready to pay the stamp duty. It is further stated that the relationship between the parties is to be considered and the executor of the document is only the father. The property was actually purchased by the husband of the



plaintiff, who was a Government servant. Since the husband of the plaintiff could not purchase the property in his name, he purchased the property in the name of his father in law. The two letters written by the first defendant prior and subsequent to the sale deed dated 07.08.2002, will clearly reveals that the consideration was paid only by the husband of the plaintiff and to prove all these facts, permission to mark the document is to be given.

13. On the side of the petitioner, it is stated that using the third defendant who was suffering from age related problems, the defendants 2 and 3 have created two settlement deeds dated 21.03.2011 and that the petitioner was advised to seek a prayer to declare the two settlement deeds as null and void and that the suit has to be amended to include the prayer.

14. The learned counsel for the petitioner would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **Pankaja and another v. Yellappa (D) Lrs. And others** reported in **2004 (4) CTC 231**, wherein it is stated as follows:

"If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straight jacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case."

15. The learned counsel for the petitioner would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **Abdul Rehman and another v. Mohd. Ruldu and others** reported in **2012 (5) CTC 803**, wherein it is stated as follows:

"At present, it application is filed after commencement of trial, it has to be shown that in spite of due diligence, it could not have been sought earlier. The object of the Rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side."

16. On the side of the respondents, it is stated that both the settlement deeds were mentioned in the plaint itself and the plaintiff is aware of the settlement deeds even at the time of filing of the suit. The suit was filed in the year 2011. After 9 years, the petitioner has come forward to amend the plaint at the stage of arguments. It is further stated that post trial amendments should not be permitted and the amendment sought for will amount to change the entire nature of the case.

17. On the side of the petitioner, it is stated that after



carrying out the amendment, to mark an unregistered document, evidence has to be let in and the trial has to be reopened.

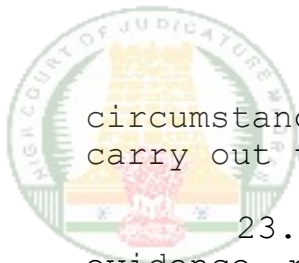
18. On the side of the respondents, it is stated that only with a motive to drag on the case, the petitioner has filed this petitions at the stage of arguments. It is further stated that the petitioner has filed a petition before the trial Court to stay the proceedings till the disposal of the civil revision petitions which are pending before this Court, which clearly reveals that the motive of the petitioner is only to drag on the proceedings.

19. It is seen that the petitioner has filed a petition before the trial Court in I.A.No.418 of 2012 seeking permission to pay the deficit Court fee and that petition was allowed on 03.12.2012. After fixing the stamp duty, notice was sent to the plaintiff on 08.02.2016 to pay the deficit stamp duty on or before 03.03.2016. It is admitted that the petitioner has not filed the stamp duty within the time frame.

20. The suit is for a prayer of declaration of title. No benomi transaction was alleged in the plaint. Though the trial Court has given him an opportunity to pay the stamp duty, the petitioner has failed to utilise that opportunity. After sleeping for four years, the petitioner has come forward with these petitions.

21. An unregistered document cannot be marked as an evidence even for collateral purpose. Though an opportunity for the petitioner to pay the stamp duty was given, the petitioner has not taken any steps to pay the stamp duty within the time frame. The petitioner has not filed any petition for extension of time for payment of deficit Court fee. Only at the stage of arguments, the petitioner has come forward with a petition for permission to mark the unregistered document. The entire claim of the petitioner is based on this document and the petitioner claims title over the suit property on the basis of this document and there cannot be a collateral purpose. Under Section 17(1)(b) of the Indian Registration Act, an unregistered document relating to a right over an immovable property cannot be marked even for collateral purpose. Hence, permission to mark the unregistered sale deed could not granted.

22. The suit was filed in the year 2011. Though in the plaint itself, the plaintiff has mentioned about the two settlement deeds in favour of the defendants 2 and 3, the plaintiff has not sought for a prayer for declaring the settlement deeds as null and void. A post trial amendment is not permissible unless the plaintiff proves that even after due diligence, he could not make the amendments at an earlier stage. Moreover, the documents were of the year 2011. The plaintiff had knowledge about the documents even at the time of filing of the suit and hence, the prayer sought for to cancel the



circumstances, this Court is not inclined to allow the petitioner to carry out the amendments.

23.The petitioner filed reopen petition to give additional evidence regarding the unregistered sale deed and regarding the amendments. The petitioner is aware of the settlement deeds even at the time of filing of the petition. The petitioner failed to pay the stamp duty as directed by the trial Court. The case is at the stage of arguments. The petitioner want to reopen the case at the stage of arguments. It is seen that the petitioner has filed a stay petition before the trial Court to stay the proceedings till the disposal of the civil revision petition. In view of the above, this Court decide that the petitioner is not entitled to reopen the trial.

24.There is no merits in all the civil revision petitions. The civil revision petitions are dismissed and the orders passed in the trial Court is confirmed. No Costs.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MRN

To
The District Munsif, Devakottai.

+2cc to Mr.V.Perumal,Advocate, SR.No.11497

+1cc to Mr.S.M.Sanjay,Advocate, SR.No.11268

C.R.P. (MD)Nos.1800 of 2019 and 51 and 52 of 2020
11.03.2020

JMN(23.03.2020) 7P : 5C