



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.02.2020

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (MD)No.1905 of 2019

and

C.M.P. (MD)Nos.9726 and 12436 of 2019

WEB COPY

Devi

.. Petitioner

Vs.

1.Narayanan @ Alagappan

2.Meiyammai

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records relating to the fair and decretal order dated 05.08.2019 made in I.A.No.2 of 2019 in O.S.No.75 of 2017 on the file of the Subordinate Court, Devakottai and set aside the same.

For Petitioner : Mr.J.Anandkumar

For Respondents : Mr.M.Mohamed Rafi

ORDER

Heard the learned counsel appearing on either side.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.2 of 2019 in O.S.No.75 of 2017 dated 05.08.2019, on the file of the Subordinate Court, Devakottai.

3.The petitioner herein is the plaintiff and the respondents herein are the defendants in the suit. The petitioner herein has filed a suit in O.S.No.75 of 2016 for a prayer of bare injunction. In that suit, the petitioner herein has filed an application in I.A.No.2 of 2019 for permission to amend the plaint.

4.The brief substance in the petition I.A.No.2 of 2019 is as follows:

The petitioner filed a suit for bare injunction. The petitioner claims the property on the basis of a sale deed dated 02.10.1998. The petitioner constructed a house and is residing in that house. The petitioner has mortgaged the property with the first defendant on 08.02.2010 and redeemed the mortgage on 15.04.2013. This fact was concealed by the first defendant. The first defendant is claiming that the plaintiff executed a sale deed on 15.04.2013 for a consideration of Rs.23,00,000/- (Rupees Twenty Three Lakhs only). The signatures in the alleged sale deed dated 15.04.2013 is denied by the petitioner and the petitioner has to amend the plaint to include the prayer to declare the document dated 15.04.2013 as null and void.

5.The brief substance of counter filed in I.A.No.2 of 2019 is

<https://hcservices.ecourts.gov.in/hcservices/>



as follows:

Already three witnesses were examined on the side of the plaintiff. Only to overcome the defence pointed out by the defendant, during the cross examination of the plaintiff's side witness, the plaintiff has come forward with this petition. The petitioner sold the suit property on 15.04.2013 for a sale consideration of Rs.23,00,000/- (Rupees Twenty Three Lakhs only) and he requested the defendants six months time to evict the premises. Since the petitioner failed to hand over possession, the defendants sent a legal notice on 22.06.2016. The petitioner has not come forward to file this petition within the time frame. The prayer sought for is barred by limitation. The value of the suit property is Rs.23,00,000/- (Rupees Twenty Three Lakhs only). The Court fee for the amount was not paid and the petition is to be dismissed.

6.The trial Court after considering both the sides, dismissed the petition. Against which, the petitioner has filed this revision petition.

7.On the side of the petitioner, it is stated that the suit property was only mortgaged with the respondents. The petitioner has not executed any sale deed. The petitioner has filed an application in I.A.No.542 of 2016 to send the document for handwriting expert and that petition was dismissed. The petitioner has filed the application in I.A.No.2 of 2019 to implead a prayer for declaring the document dated 15.04.2013 as null and void. The trial Court dismissed the petition on the ground that the prayer for setting aside the sale deed is barred by limitation. The cause of action starts only on 23.06.2016. The application was filed on 10.04.2019 within a period of three years. The petitioner redeemed the property on 15.04.2013 and on that date, the sale deed was executed. The sale deed itself is a fraudulent document. The fraud vitiates all the transactions. The limitation starts from the date of knowledge and the claim is within three years.

8.The learned counsel for the petitioner relied on the judgment passed by this Court in the case of **Chitra v. Kannan** in **2015 -1-L.W. 876**, wherein it is stated as follows:

"When already a suit for injunction, which involves the question of title, has been filed admittedly within time, there shall be no question of the bar of limitation being attracted for seeking the relief of declaration, more so during the pendency of the suit for injunction.. Even assuming that separate period of limitation can be applied in respect of the prayer for declaration, the right to sue for declaration arose only on the filing of the written statement of the respondent containing averments denying the title of the petitioner herein.

Even without such a plea, based on the denial



of title made by the defendant, the plaintiff can adduce evidence in support of her claim that she derived valid title."

9. On the side of the petitioner, it is stated that to avoid multiplicity of cases and to decide the real issue between the parties and to have better appreciation of the facts, the amendment is needed. It is further stated that the question of limitation is an arguable point and that an issue is to be framed on that aspect and that the petition cannot be rejected at the threshold.

10. The learned counsel for the petitioner would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **Ragu Thilak D. John v. S.Rayappan and others** reported on (2001) 2 Supreme Court Cases 472, wherein it is stated as follows:

"4. In view of the subsequent developments, the appellant filed an application under Order 6 Rule 17 of the amendment of the plaint for adding paras 8(a) to 8 (f) in his plaint.....It was further held that as the appellant was seeking recovery of damages, the amendment could not be allowed as it would allegedly change the nature of the suit. It was also observed that the amendment sought was barred by limitation.

The dominant purpose of allowing the amendment is to minimise the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case, as is evident from the perusal of averments made in paras 8(a) to 8(f) to the plaint which were sought to be incorporated by way of amendment. We feel that in the circumstances of the case the plea of limitation being disputed could be made a subject-matter of the issue after allowing the amendment prayed for."

11. On the side of the petitioner, it is stated that already facts are narrated in the suit. Mere prayer will not change the character of the suit and an issue can be framed regarding the question of limitation and it is stated that there is no new case to be introduced by way of this amendment.

12. 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 on 2004 (4) CTC 231, wherein it is stated as follows:

"This Court in numerous cases has held the dominant purpose of allowing the amendment is to minimize the litigation, therefore, if the facts of the case so permits, it is always open to the Court to allow applications in spite of the delay and



latches in moving such amendment application.

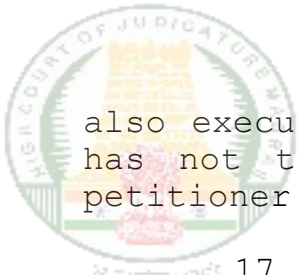
If the granting of an amendment really subverses the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straight jacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case."

13. On the side of the respondents, it is stated that the suit is only for bare injunction. The petitioner is aware of the sale deed. The petitioner and respondents are family friends. The petitioner approached the respondents for a loan of Rs.7,00,000/- (Rupees Seven Lakhs only) for the marriage of his daughter on 08.02.2010. A mortgage deed was executed and again the petitioner demanded Rs.13,00,000/- (Rupees Thirteen Lakhs only) and handed over the property for sale. The sale consideration was fixed as Rs.23,00,000/- (Rupees Twenty Three Lakhs only) and remaining Rs.16,00,000/- (Rupees Sixteen Lakhs only) was received by the first respondent and he executed a sale deed on 15.04.2013. On that date itself, the mortgage deed was cancelled and symbolic possession was given to the respondents and the petitioner prayed six months time to vacate the premises but failed to hand over the possession.

14. The claim of the petitioner is that the sale deed was executed under threat. But no police complaint was lodged. The petitioner wanted to re-purchase the suit property and they approached the first respondent to enter into a sale agreement. The petitioner has examined three witness and the petitioner was cross examined.

15. On the side of petitioner, it is stated that the petitioner admitted the sale deed in the written statement in O.S.No.91 of 2018 pending before the Sub Court, Devakottai. The revenue records are transferred to the name of the respondents. Already the sale deed was marked as a document in the I.A. Petition. No steps were taken till 13.04.2016. The prayer is time barred. The trial Court has given a clear findings regarding the date of knowledge and that the trial Court gave a findings that in the reply notice which was marked as Ex.R6, the petitioner has accepted that out of threatening, he has executed a sale deed dated 15.04.2013 and that reveals that the petitioner was aware of the execution of the sale deed on the date of execution itself and the trial Court came to a conclusion that the prayer sought for by the plaintiff is time barred and the trial Court dismissed the petition.

16. It is seen that the claim of the petitioner is that he mortgaged the property and later redeemed the property and the claim of the respondents is that the petitioner mortgaged the property and then she sold out the property to the respondents and a redemption deed was executed and on the same date, the disputed sale deed was



also executed. Though the petitioner was aware of the sale deed he has not taken any steps and only by way of this petition, the petitioner came forward to amend the prayer

17.However, an opportunity for the petitioner to put forth his case has to be given. The right of the petitioner cannot be curtailed at the threshold. The trial Court has to frame an issue as to the question of limitation and then to decide the suit accordingly.

18.With the above direction, this Civil Revision Petition is allowed and the order passed in I.A.No.2 of 2019 in O.S.No.75 of 2017 dated 05.08.2019, on the file of the Subordinate Court, Devakottai is set aside. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MRN

To
The Sub Judge, Devakottai.

+1 CC to M/s.J.ANATHKUMAR, Advocate (SR-8460[F] dated 26/02/2020)

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SMA/16/03/2020/5P/3C