



WEB COPY

C.R.P.(PD)(MD)No.2260 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 05.12.2019
DELIVERED ON : 22.05.2020
CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P.(PD)(MD)No.2260 of 2019

and

C.M.P.(MD)No.11701 of 2019

1.S.P.Meenal
2.Manchula
3.Kasirajan
4.Janaki

.. Petitioners/Respondents/Defendants

Vs.

N.Rajalakshmi

.. Respondent/Petitioner/Plaintiff

Prayer: This Civil revision petition is filed under Article 227 of the Constitution of India, to call for the records relating to the fair and decretal order dated 12.09.2019 made in I.A.No.636 of 2017 in O.S.No.443 of 2009 on the file of the learned District Munsif, Tirumangalam and to set aside the same with costs.

For Petitioners : Mr.R.Suriyanarayanan
For Respondent : Mr.S.Srinivasa Raghavan

ORDER

With the consent of both sides counsels, this order is pronounced in the open Court through Video Conference system on 20.05.2020.

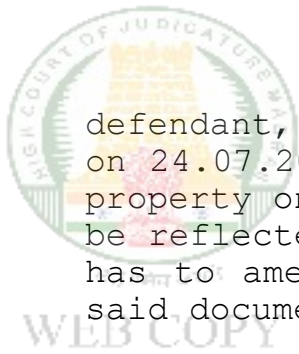
2.This Civil Revision Petition has been filed against the order passed in I.A.No.636 of 2017 in O.S.No.443 of 2009 dated 12.09.2019 on the file of the learned District Munsif, Tirumangalam.

3.The petitioners herein are the defendants and the respondent herein is the plaintiff in the suit. The respondent herein has filed a suit in O.S.No.443 of 2009 for a prayer of permanent injunction. In the suit, the respondent herein has filed a petition in I.A.No.636 of 2017 to amend the suit with an additional prayer to declare the settlement deed dated 24.07.2008 and the sale deed dated 06.03.2010 as null and void. The petition was allowed by the trial Court on payment of cost of Rs.2,500/- (Rupees Two Thousand only). Against which, the revision petitioners have preferred this revision petition.

4.The brief substance of the petition in I.A.No.636 of 2017 is as follows:

While a petition in I.A.No.213 of 2010 was pending, the third defendant has executed a sale deed in favour of the fourth defendant on 06.03.2010. The second defendant as a power agent of the third

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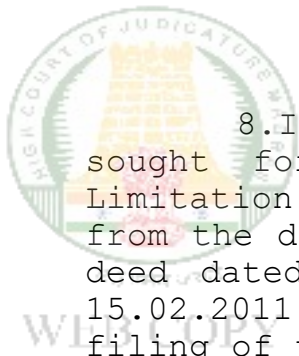
defendant, has executed a gift deed in favour of the first defendant on 24.07.2008. The defendants 1 and 2 will not get any right in the property on the basis of these documents. Any how these entries will be reflected in the encumbrance certificate and hence, the plaintiff has to amend the plaint to insert the prayer to declare the above said documents as null and void.

5.The brief substance of the counter in I.A.No.636 of 2017 is as follows:

When a petition in I.A.No.213 of 2010 was pending, the third defendant executed a sale deed in favour of the fourth defendant and the second defendant as a power agent of the third defendant, has executed a gift deed dated 24.07.2008 in favour of the first defendant. Both the plaintiff and his predecessor in title has no right over the suit property. The suit property and other properties were in Paimash No.181 and the same was renumbered as survey No.162/8, during the UDR Scheme. Subsequently, an extent of 0.20.2 ares of land in survey No.162/8 was sub divided and the first defendant was allotted patta No.1138. Out of the total extent of 49 ½ cents, 37 ½ cents was sold to one Ramalingam on 26.10.1990. The balance property with an extent of 0.04.5 ares in Survey No.162/8A2 was sub divided and chitta and adangal were issued in the name of the first defendant. The land with an extent of 0.04 ares was gifted to the second defendant by the first defendant through the third defendant as the power agent. The gift was accepted by the second defendant.

6.The father of the plaintiff Narasimmalu without verifying the records in the proper manner, purchased the property in Paimash No.61 from a person, who is not having any right over the property. By mentioning the wrong survey Number and wrong boundaries, with an intention to grab the property of the defendants, the plaintiff and his father approached the Joint Registrar and the Surveyors. The property purchased by the plaintiff is situated in Paimash No.61. The suit property is situated in Paimash No.181. There is a difference in the documents of the year 1951 and 1962. The first defendant has executed a gift deed in favour of the second defendant and the second defendant has executed a sale deed in favour of the fourth defendant through his power agent, the third defendant. The fourth defendant purchased the suit properties after verifying all the previous deeds, revenue records and Encumbrance Certificates and the gift deed is valid and that only by paying the correct sale consideration, the fourth defendant has purchased the property. The petitioner is aware of the sale deed dated 06.03.2010 through I.A.No.1394 of 2010 dated 15.02.2011 and hence, the petition is barred by limitation. There is no necessity to carry out the amendments. The petition is to be dismissed with costs.

7.The trial Court after hearing both sides, allowed the petition. Against which, the defendants preferred this revision petition.



8. In the revision petition, it is stated that the relief sought for is barred by limitation under Article 58 of the Limitation Act. The relief should be sought for within three years from the date of the documents. The respondent is aware of the sale deed dated 06.03.2010 made in favour of the fourth defendant on 15.02.2011 in view of the petition in I.A.No.1394 of 2010. Hence, filing of the amendment petition after three years is hit by Article 58 of the Limitation Act. The proposed amendment will completely change the nature of the suit and the cause of action and the petitioner cannot be compensated by payment of cost. Post trial amendment cannot be entertained until the respondent pleaded that though with due diligence, he could not file the petition in time and the I.A. Petition is to be dismissed.

9. On the side of the revision petitioners, it is stated that after the Amendment Act 2002, the amendment cannot be carried out, if the case is in the post trial stage. No declaratory relief was sought for in the plaint and the suit itself is not maintainable.

10. On the side of the respondent, it is stated that since there was a threat to the possession of the plaintiff, originally the suit was filed against the defendants for injunction. While the suit is pending, the third defendant sold the property to the fourth defendant and that if the amendment is not allowed, another suit has to be filed for declaration as the defendants are going on alienating the property.

11. The learned counsel appearing for the petitioners would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **South Konkan Distilleries & Another v. Prabhakar Gajanan Naik & Others** reported in **2009 - 1 - 1.w. 510**, which reads as follows:

"Generally, as a rule, Court will decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of filing of the application."

12. On the side of the revision petitioners, it is stated that if the amendment is sought for after the commencement of the trial, the question of prejudice to the opposite party will arise and after the amendment Act, 2002, the Court has no jurisdiction to amend the pleadings of either party, at any stage of the pleadings, after the commencement of the trial. In support of his contention, the judgment passed by the Hon'ble Supreme Court in the case of **Rajkumar Gurawara (Died) through L.Rs. v. S.K.Sarwagi & Co., Pvt. Ltd., and another** reported in **2008 (5) CTC 253**, is cited, which reads as follows:

"The first part of the rule makes it abundantly clear that at any stage of the proceedings, parties are free to alter or amend their pleadings as may be



necessary for the purpose of determining the real questions in controversy . However, this Rule is subject to proviso appended therein. The said Rule with proviso again substituted by Act 22 of 2002 with effect from 01.07.2002 makes it clear that after the commencement of the trial, no application for amendment shall be allowed."

13.The learned counsel for the respondent would rely upon the judgment passed by this Court in the case of **Kasiappa Gounder v. Karuppan** reported in **2005 (3) CTC 412**, which reads as follows:

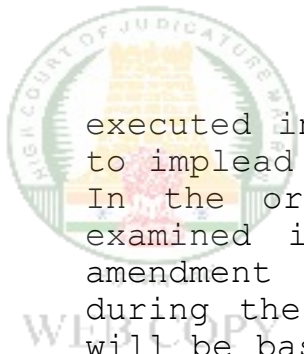
"15.Due to the long pendency of the suits and the period, valuable right must have been accrued to the defendants. In the facts and circumstances of the case, if the proposed amendment is allowed eight years after the filing of the suit, it would cause serious prejudice to the defendants seriously affecting their rights accrued over the years. This aspect was also not taken note of by the trial Court.

16.Order 6, Rule 17 of C.P.C., has been amended by the C.P.C. Amendment Act with effect from 01.07.2002. A new proviso has been added to the rule, namely, that no application for amendment of the pleadings shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. Thus after the trial of the case has commenced, no application for amendment of the pleading shall, be allowed unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the Trial."

14.The learned counsel for the respondent would rely upon the judgment passed by this Court in the case of **S.Kuppusamy v. P.K.Subramani & Others** reported in **2005 (4) CTC 734**, which reads as follows:

"Even though the power conferred under Order 6, Rule 17 of the Code of Civil Procedure can be exercised to avoid the multiplicity of proceedings, applying the ration laid down by the Apex Court in 1995 TNLJ 77 (SC) (Cited supra), such power cannot be indiscriminately exercised to extend the period of limitation prescribed under the Limitation Act."

15.It is seen that the suit was filed in the year 2002 and the I.A. Petition was filed in the year 2017. The case of the respondents is that during the pendency of the suit, two deeds were



executed in favour of the fourth defendant and the respondent want to implead a prayer to declare these two documents as null and void. In the order, the trial Court has pointed out that P.W.1 was examined in chief. Admittedly, there is a delay in filing the amendment petition. The sale deed dated 06.03.2010 was executed, during the pendency of the suit and the validity of the document will be based on the result of the original suit. The plaintiff did not take steps to question the documents within a period of three years. The suit was filed only for bare injunction and not for declaration.

16.On the side of the respondent, it is stated that the delay in filing the petition is compensated by the payment of cost of Rs.2,500/- (Rupees Two Thousand and Five Hundred only). It is further stated that the proposed amendment will not change the nature of the suit or the cause of action and that the amendment will save the valuable time of the Court by avoiding multiplicity of cases.

17.It is seen that the plaintiff sought for an amendment with a delay. The suit was originally filed for a prayer of injunction. During the pendency of the suit, the documents are executed. Hence, an opportunity for the plaintiff has to be given to amend the plaint regarding the subsequent documents. The validity of the deeds depend on the result of the original suit.

18.The amendment will not alter the nature of the suit and the amendment will not create prejudice to the defendants. There is no necessity to interference in the order of the trial Court. In the above circumstances, the revision petition is dismissed and the order passed in I.A.No.636 of 2017 in O.S.No.443 of 2009 dated 12.09.2019 on the file of the learned District Munsif, Tirumangalam is confirmed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2020

Sub Assistant Registrar(CS)

MRN

To

The District Munsif, Tirumangalam.

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22.05.2020

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