



CRP.PD.No.705/2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.PD.No.705/2019 & CMP.No.4581/2019

**[Hybrid Mode]**

1.Anbazhagan  
2.Amudha

.. Petitioners /  
Plaintiffs

Vs.

1.Pachaiyappan  
2.Valarmathi  
3.Srinivasan  
4.Pandidurai  
5.Renu  
6.Thoppili  
7.Kantha  
8.Kalyani  
9.Inba Jothi  
10.Manonmani  
11.Kalaiyarasi

.. Respondents  
/ Defendants

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order of the learned District Munsif of Harur dated 28.09.2018 in IA.No.382/2018 in OS.No.85/2012.



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For Petitioners : Mr.B.Bharath Kumar for  
Mr.V.Nicholas  
For RR 1 to 4 : Mr.K.Thiruvengadam

ORDER

- (1) This Civil Revision Petition is directed against the order dated 28.09.2018 made in IA.No.382/2019 in OS.No.85/2012 by the learned District Munsif, Harur, dismissing the Interlocutory Application filed by the petitioners/plaintiffs to amend the plaint filed by them in OS.No.85/2012.
- (2) The revision petitioners / plaintiffs filed the suit in OS.No.85/2012 on the file of the learned District Munsif, Harur, originally for permanent injunction restraining the defendants/respondents herein from interfering with the peaceful possession and enjoyment of the property by the plaintiffs/revision petitioners herein. The suit is also for an injunction restraining the defendants/respondents herein from encroaching into the property covered by the Settlement Deed dated 15.07.2004.
- (3) The suit property is described as a property in S.No.24/1C admeasuring to an extent of 67 cents and a right in the well. A



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written statement was filed by the respondents herein who are defendants in the suit.

- (4) In the written statement, the execution of the Settlement Deed under the document dated 15.07.2004 is admitted. However, it is stated that the said document is not valid. It is also stated that the 1st defendant had executed a Deed of Cancellation of the Settlement Deed dated 15.07.2004 by a separate document dated 20.04.2012. It is admitted that the trial stood commenced and when the matter was posted for cross-examination of PW1, the revision petitioners/plaintiffs filed an Application in IA.No.382/2018 to amend the plaint.
- (5) It is to be noted that the amendment is for including a prayer for declaration of title and for a further declaration that the Cancellation Deed dated 20.04.2012 cancelling the Settlement Deed is invalid. The amendment is also to correct the survey number of the property.
- (6) The said Interlocutory Application was contested by the defendants/respondents herein mainly on the ground that the prayer



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for declaration to declare the cancellation of the Settlement Deed, is barred by limitation and that the application for amendment cannot be allowed. It is also stated that the amendment petition was filed after the commencement of trial and that, serious prejudice would be caused to the respondents/defendants.

- (7) The Trial Court dismissed the Interlocutory Application mainly on the ground that the relief to declare the cancellation of Settlement Deed as void, is barred by limitation and that suit for bare injunction is sought to be converted as a suit for declaration of title and consequential injunction which would change the character of the suit. The Trial Court giving one more that the amendment will change the character of the suit, dismissed the Interlocutory Application filed for amendment of plaint. Aggrieved by the same, the present Civil Revision Petition is filed.
- (8) This Court is unable to sustain the view taken by the Trial Court while considering the petition/application for amendment in this particular facts and circumstance of the case.



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- (9) The suit is based on a Settlement Deed said to have been executed by the 1st defendant in favour of the plaintiffs/revision petitioners herein. It is stated in the plaint that the Settlement Deed was accepted and acted upon. In the cause of action paragraph for filing the suit, it is stated that the 1st defendant is making an attempt to cancel the Settlement Deed and the defendants are trying to encroach into the property covered under the Settlement Deed. When the suit is filed for bare injunction on the basis of a document of conveyance executed by the 1st defendant himself, there need not be a declaration of title as the suit for injunction itself was based on title.
- (10) It is specifically stated that the 1st defendant has made an attempt to cancel the Settlement Deed in the plaint. When the plaintiffs / revision petitioners came to know about the cancellation of the Settlement Deed, it may be proper for them to seek appropriate relief including the prayer for declaration of title. That is the purpose of amendment. Though the petition for amendment is filed belatedly, the *bona fides* for filing the petition for the amendment



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cannot be doubted. Consequent to the cancellation of the registered Settlement Deed, it would be appropriate for the plaintiffs/revision petitioners to seek amendment of plaint to include a prayer for declaration of title and for a further declaration declaring the cancellation of Settlement Deed as null and void. The further amendments are only consequential.

(11) As regards the amendment in relation to the survey number of the suit property, it is admitted by the learned counsel for the respondents/defendants that a Rectification Deed was already executed by correcting the survey number and therefore, the revision petitioners / plaintiffs has to amend the description of the property by referring to the correct survey number in which the suit property is located. Therefore, the amendment is necessary and the same is required to resolve the dispute that arose when the suit was filed.

(12) The learned counsel for respondents/defendants however submitted that the amendment with regard to the validity of the document cancelling the Settlement Deed is barred by limitation. The



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question of limitation is a mixed question of law and facts.

(13) First of all, the prior question is whether the cancellation of the Settlement Deed can be executed once the settlement is accepted and acted upon. However, it is open to the respondents/defendants to raise the plea of limitation and the same will be considered by the Trial Court. It is also open to the respondents/defendants to raise all his objections and to file an additional written statement if they have any grievance against any of the prayers that is sought to be introduced by way of amendment.

(14) With the above observations, the Civil Revision Petition stands **allowed** setting aside the order dated 28.09.2018 made in IA.No.382/2018 in OS.No.85/2012 by the learned District Munsif, Harur. No costs. Consequently, connected miscellaneous petition is closed.

15.12.2021

AP  
Internet : Yes

To  
The District Munsif  
Harur.



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S.S.SUNDAR, J.,

AP

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