



WEB COPY



A.No.2857 of 2021
in C.S.No.538 of 2011

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Reserved on : 06.10.2021
Pronounced on : 22.12.2021

N.SESHASAYEE.J.,

The suit is laid for cancellation of sale deed dated 21.02.2007, which the plaintiff had executed in favour of the second defendant, and also to declare that the sale deed dated 21.04.2011 executed by the second defendant in favour of the third defendant is null and void. There are a few ancillary reliefs too.

2. The broad case of the plaintiff is that the plaintiff and the first defendant had earlier acquaintance, that the latter got into certain financial difficulties in running his business (the first defendant), and to redeem himself from the same he obtained loan firstly from a third party and for securing which, he executed a sale deed in favour of such third party. The idea was that the first defendant would mobilise the funds and pay the said third party. That did not happen. It is in this circumstances, the plaintiff borrowed money from the second defendant, had the sale deed executed in favour of the third party



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referred to above, and executed a sale deed dated 21.02.2007 in favour of the second defendant. The plaintiff has been in physical possession of the property and he continued to be in physical possession of the suit property. While things stood thus, the second defendant had sold the property to the third defendant on 21.04.2011. When his possession was threatened, the plaintiff has laid the present.

3. The plaintiff seeks amendment both to the body of the plaint and also in the prayer column. Turning to his allegation of the body of the plaint, he wants to introduce paragraph 25(a) to (k). Upto proposed paragraph 25(a) to (e), plaintiff only expatiates on the earlier allegations made in the original plaint, and that the sale deed dated 21.02.2007 which he had executed in favour of the second defendant was only a security document for the loan he obtained. Paragraph No.25(f) to 25(i) relate to a new fact in which he alleges that the second and third defendants had fabricated certain documents to show that the plaintiff was a tenant under the second defendant, on the strength of which the third defendant as purchaser from the second defendant had filed RCOP.No.1424 of 2011 on the file of the Small Causes Court, Chennai, for eviction on the ground of willful default in the matter of



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payment of rent. The plaintiff further alleges that he had contested the matter and had put forth his case that he was not a tenant of the property. In that RCOP 1424 of 2011, the third defendant-landlord had taken out a petition in MP.No.126/2012 for a direction under to deposit of rent, and it came to be allowed. The plaintiff challenged the said order in RCA.No.710 of 2013 before the learned VII Judge, Small Causes Court/Rent Control Appellate Authority, Chennai. That appeal came to be dismissed on 26.10.2018 for non-prosecution. In the meantime, the third defendant preferred an Execution Petition before the Rent Controller, and the Tribunal had ordered delivery of the property. Based on the same, the third defendant had taken possession. The plaintiff pleads that the proceedings of the Rent Controller is without jurisdiction and is a nullity. And to this effect, the plaintiff wanted to introduce possession relief in Paragraph No.25(g) to 25(i).

4.The counter was filed by the second respondent and he contends that the amendment is barred by limitation. He further submits that the plaintiff is not in possession of the property from September 2013, and the additional prayer now sought by way of amendment is barred by limitation .



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5.1 Heard both sides. This Court has little hesitation in allowing the amendment upto Paragraph 25(a) to 25(e), since they are only an expatiation of the core allegations pleaded by the plaintiff.

5.2 Turning to RCOP proceedings, this Court has to hold that if it is the case of the plaintiff that the lease agreement on which the cause of action for the aforesaid RCOP was founded, it may go to the root of the matter and the civil court is competent to decide on the genuineness of a document. However, it is still beyond the jurisdiction of the civil court to impeach the Orders of a statutory Tribunal, since a Civil Court cannot pronounce on the competency of the Order passed by the Tribunal as regards matters falling within latter's domain. Therefore, the Court cannot permit insertion of paragraphs 25(g) to 25(k) by way of amendment. This has to be dismissed.

5.3 Turning to amendment of prayers, the Court drops prayer '27(c)' as prayed, and the present prayer 27(d) is numbered as prayer 27(c). This Court does not allow insertion of prayer 27(e) as prayed.

5.4 Since the new prayers sought vide 27(f) and 27(g) are based on the



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genuineness or otherwise of the alleged lease deed, the relief now sought
Vide the proposed 27(f) and 27(g) can be allowed. After all, if the plaintiff
succeeds in the suit, the third defendant would be liable to return the property
to the plaintiff. These prayers shall be added as Reliefs 27(d) and 27(e).

6. So far as the limitation goes as concerning the newly added prayer 25(f)
and 25(g), they are well within the period of limitation, since the time
provided for seeking his prayer for recovery of possession is 12 years from
the date of arising of cause of action. Admittedly, the plaintiff was
dispossessed only from September 2013. More so, this is a suit on title and
the facts pleaded are all subsequent events.

7. Accordingly, this application is partly allowed in the manner indicated in
paragraph 5.1 to 5.4. The applicant is required to carry out necessary
amendment in the plaint within fifteen days from today after excluding the
Christmas Holidays.

22.12.2021

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Pre-delivery order in
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