

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).Nos.3269 & 3270 of 2016

and

C.M.P.No.16609 of 2016

J.Dhananjayan

.. Petitioner
(in both cases)

Vs.

1.The District Collector,
Collectorate,
Sathuvachari,
Vellore.

2.The Revenue Divisional Officer,
Ranipet,
Vellore District.

3.The Thasildhar,
Walaja,
Walaja taluk,
Vellore District.

4.The Village Administrative Officer,
Pulivalam Village,
Walaja taluk,
Vellore District.

5.Lakshmi

6.Malathi

7.Minor. Yamuna

8.Minor. Hari

.. Respondents
(in both cases)

(Minor respondents 7 & 8 are represented by
their Mother, Malathi, 6th respondent herein)

Common Prayer: These Civil Revision Petitions are filed under Article 227 of the Constitution of India against the fair and decretal orders dated 29.03.2016 passed in I.A.Nos.309 & 310 of 2015 in O.S.No.266 of 2007 on the file of the District Munsif Court, Sholinghur.

In both the cases:

For Petitioner : Mr.A.Gouthaman

For RR 1 to 4 : Mrs.Dr.S.Suriya
Government of Counsel (C.S.)

For R5 : No appearance

For RR 6 to 8 : Mr.K.Pattabhi

COMMON ORDER

(These matters are heard through “Video Conferencing/Hybrid Mode”).)

These Civil Revision Petitions are filed against the fair and decretal orders dated 29.03.2016 passed in I.A.Nos.309 & 310 of 2015 in O.S.No.266 of 2007 on the file of the District Munsif Court, Sholinghur.

2.The issues involved in both the Civil Revision Petitions are one and the same and hence, these Civil Revision Petitions are disposed of by this common order.

3.The petitioner is the plaintiff in O.S.No.266 of 2007 on the file of the District Munsif Court, Sholinghur. Originally the petitioner filed suit against the respondents 1 to 4 for mandatory injunction directing the respondents 1 to 4 to grant patta in favour of the petitioner in respect of the suit property. The respondents 1 to 4, 5 and 6 to 8 filed separate written statements and are contesting the suit. Pending suit, the petitioner filed I.A.No.357 of 2013 for amendment of the plaint to include the prayer to declare the registered sale deed dated 10.05.2006 executed by the 5th respondent / 5th defendant in favour of one Balaji as null and void. The said I.A. was allowed. Trial commenced and after completion of evidence on both sides, the suit was posted for arguments. At that time, the petitioner filed two applications in I.A.Nos.309 & 310 of 2015 to re-open the case and to amend the plaint to include the relief of declaration declaring the sale deed dated 13.08.1998 executed in favour of the 5th respondent as null and void.

4. According to the petitioner, he came to know that the persons who sold the suit property by the sale deed dated 02.10.1955 to the Grand Father of the petitioner viz., Govinda Reddy, sold the suit property to the 5th respondent by the sale deed dated 13.08.1998. Hence, the relief of declaration that sale deed dated 13.08.1998 executed in favour of the 5th respondent as null and void is necessary and prayed for re-opening of the case. The petitioner further stated that the petitioner's Grand Father Govinda Reddy was in the possession and enjoyment of the suit property from the year 1955 and hence, the plaint has to be amended.

5. The 5th respondent filed counter affidavit and denied all the averments and stated that the written statement has been filed by the 5th respondent on 19.08.2008 itself and it has been mentioned that 5th respondent purchased the suit property by sale deed dated 13.08.1998. Again the 6th respondent in the written statement filed by her, reiterated the said averments. In spite of the same, the petitioner did not deliberately take any steps to amend the prayer. The petitioner did not explain as to why he has not filed the applications before the commencement of Trial. As per the law, no amendment can be allowed after commencement of Trial unless the Court

comes to the conclusion that inspite of due diligence, the party could not seek amendment before commencement of Trial and prayed for dismissal of both I.As.

6.The learned Judge considering the averments in the affidavit, counter affidavit and written statements and judgments relied on by the respondents, dismissed the I.A.No.310 of 2015 filed to amend the plaint and in view of the same, I.A.No.309 of 2015 for re-opening the case was also dismissed.

7.Against the said orders of dismissal dated 29.03.2016 passed in I.A.Nos.309 & 310 of 2015, the petitioner has come out with the present two Civil Revision Petitions.

8.The learned counsel appearing for the petitioner contended that the learned Judge failed to see that amendment can be carried out at any stage of the suit in order to decide the real controversy between the parties. The learned Judge failed to see that suit property originally belonged to one Kollapuri and Appadurai as their ancestral property and they were in possession and enjoyment of the suit property. The petitioner's Grand Father viz., Govinda Reddy purchased the suit property by the sale deed dated

02.10.1955 from the original owners viz., Kollapuri and Appadurai and he was in peaceful possession and enjoyment of the suit property from the date of his purchase. By oversight, without having any right, title and patta to the suit property, the 5th respondent sold the property to one Balaji on 10.05.2006. The learned Judge failed to note that already I.A.No.357 of 2013 filed by the petitioner for amendment of the plaint to declare that sale deed dated 10.05.2006 executed by 5th respondent in favour of one Bajaji as null and void was ordered and amendment was carried out. The present amendment sought for is only consequential to the said amendment. The petitioner's previous counsel by oversight, included only the prayer for declaration declaring the sale deed executed by the 5th respondent in favour of one Balaji as null and void inspite of asking to include the prayer for declaration that sale deed executed in favour of 5th defendant dated 13.08.1998 as null and void. The present amendment is not barred by law of Limitation and the present amendment is sought only to safeguard the interest of parties. If the present amendment is allowed, it will decide the real dispute in controversy of the suit and it will avoid multiplicity of the parties of the suit with regard to same issue and prayed for allowing both the Civil Revision Petitions.

9.The learned Government of Counsel (C.S.) appearing for the respondents 1 to 4 as well as the learned counsel appearing for the respondents 6 to 8 contended that the learned Judge has considered all the materials placed before him in proper perspective and exercising his jurisdiction conferred on him, has dismissed both the I.As by giving cogent and valid reason. There is no error in the said order of the learned Judge warranting interference by this Court and prayed for dismissal of both the Civil Revision Petitions.

10.Though notice has been served on the 5th respondent and her name is printed in the cause list, there is no representation on behalf of her, either in person or through counsel.

11.Heard the learned counsel appearing for the petitioner as well as the learned Government of Counsel (C.S.) appearing for the respondents 1 to 4 and the learned counsel appearing for the respondents 6 to 8 and perused the entire materials on record.

12.From the materials on record, it is seen that the petitioner filed suit for mandatory injunction directing the respondents 1 to 4 to issue patta in

favour of the petitioner in respect of the suit property. Subsequently, he filed I.A.No.357 of 2013 to amend the plaint to include the relief of declaration to declare the sale deed dated 10.05.2006 executed by 5th respondent in favour of one Balaji as null and void. The said I.A. was allowed. Trial commenced and after closing of evidence by both the parties, suit was posted for arguments. According to 6th respondent, the petitioner took 4 or 5 adjournments to argue the matter and filed the present two applications only to drag on the proceedings. From the materials on record it is seen that the 5th respondent in the written statement filed on 19.08.2008 itself has stated about her purchase by sale deed dated 13.08.1998. The said averment was reiterated by the 6th respondent in the written statement filed by her. This shows that the petitioner was aware of the purchase of the suit property by 5th respondent in the year 2008 itself. In spite of the same, the petitioner has not taken any steps to include the relief now sought for in the present petition. Further, in the year 2013 he filed I.A.No.357 of 2013 to include the prayer for declaration to declare the sale deed dated 10.05.2006 executed by 5th respondent in favour of one Balaji as null and void. The said I.A. was allowed and amendment was carried out. Even at that time also the petitioner has not sought for the relief now sought for in the present petition. As per the Amendment Act 2002, as per the proviso in Order VI Rule 17 of C.P.C., no award to the plaint can be

ordered after commencement of Trial, unless the party proves that inspite of due diligence he could not seek amendment before commencement of Trial. In the present case, except stating that he came to know about the execution of the sale deed dated 13.08.1998, the petitioner has not given any reason that inspite of due diligence, he could not seek the amendment before commencement of Trial. The learned Judge considered Order VI Rule 17, affidavit, counter affidavit, written statement of 5th respondent and judgment relied on by counsel for respondents, dismissed the I.A.No.310 of 2015 filed for amendment by giving cogent and valid reason. In view of the dismissal of I.A. for amendment, the learned Judge also dismissed the I.A.No.309 of 2015 filed to re-open the case. There is no error or irregularity in the orders of the learned Judge warranting interference by this Court.

13.In the result, both the Civil Revision Petitions are dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index : Yes / No
Internet : Yes / No

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V.M.VELUMANI, J.

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