



C.R.P(PD).Nos.2580 & 2583 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD).Nos.2580 & 2583 of 2021

and

CMP.No.19174 of 2021

Muniappan

..Petitioner in both petitions

Vs.

1.Kaveriammal

2.Govindaraji

..Respondent in both petitions

Common Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 10.08.2021 in IA.Nos.205 & 206 of 2020 in OS.No.49 of 2008 on the file of the learned District Munsif, Palacode.

For Petitioner in both petitions : Mr.R.Selvakumar

COMMON ORDER

Challenge in these revisions is to the order of the learned District Munsif, Palacode made in IA.Nos.205 & 206 of 2020 permitting the additional written statement to be filed in the suit in OS.No.49 of 2008 and



re-opening the evidence on the side of the defendants to enable marking of a document.

2.The said suit was filed by the plaintiff / petitioner herein seeking declaration of his title and for recovery of possession, contending that the suit property was settled on him by his father and mother under a registered deed of settlement dated 07.02.1980. The respondents / defendants filed a written statement contending that there was no such settlement and the plaintiff was never put in possession pursuant to the said settlement and the settlement was not acted upon. When the trial was about to conclude, the respondents filed an application in IA.No.206 of 2020 seeking permission to file an additional written statement, claiming that the settlement deed dated 07.02.1980 was cancelled by an instrument dated 30.07.1987 and it was also claimed that the defendants came to know about the cancellation only on 06.01.2020. They also wanted to add that they have alienated the portion of the property to the 3rd party. In IA.No.205 of 2020, the petitioners sought to re-open their evidence to enable them to produce the cancellation deed.



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3. These applications were resisted by the petitioner claiming that the applications are belated and the factum of cancellation cannot now be introduced as the very cancellation itself is invalid. The learned District Munsif, who considered the applications concluded that filing of the additional written statement would not alter the nature of the case and the delay will not cause any prejudice to the plaintiff. On the above said conclusion, the learned District Munsif allowed the applications.

4. I have heard Mr.R.Selvakumar, learned counsel appearing for the petitioner.

5. Mr.R.Selvakumar, learned counsel appearing for the petitioner would vehemently contend that the claim that the document has been cancelled is definitely introducing a new case and therefore, the whole character of the suit would change. It would also render the evidence let in irrelevant and the parties would be forced to seek a *de nova* trial. He would also add that the delay has not been properly appreciated by the learned District Munsif. I have considered the submission of the learned counsel.



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6.This Court had categorically laid down that the unilateral cancellation of the instrument of a settlement is not valid. Therefore, whether the cancellation is projected or not, immaterial of the cancellation, if the petitioner proves that the settlement deed dated 07.02.1980 is valid, he would be entitled to the property. Therefore, introduction of a plea relating to the cancellation and marking of the cancellation deed will not cause any prejudice to the petitioner. As far as the alienation is concerned, admittedly, the alienation is pending suit and the *lis-pendes* purchaser need not be made a party. Non-impleading of the *lis pendens* purchaser will not affect the right of the petitioner.

7.Hence, I see, no reason to interfere with the discretion exercised by the learned District Munsif. These civil revision petitions are therefore, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

29.11.2021

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Speaking

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To:-

The District Munsif cum Judicial Magistrate,
Palacode.



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R.SUBRAMANIAN, J.

KKN

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