



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP No.2796 of 2021

and

CMP.No.20281 of 2021

R.Sekar

... Petitioner/Plaintiff

Vs

1.Indira

2.Theerthagiri

... Respondents/Defendants

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 17.08.2021 made in I.A.No.190 of 2019 in O.S.No.64 of 2015 on the file of the Subordinate Court, Harur, Dharmapuri District, filed by the Petitioner as under Order 6, Rule 17 of CPC.

For Petitioner : Mr.J.Pradeep

O R D E R

This revision has been filed by the plaintiff in O.S.No.64 of 2015. The suit filed by him seeking declaration of title and consequential permanent injunction. Though he had sought for the relief for declaration that the decree and judgment in O.S.No.52 of 2010 is not valid and will not bind the plaintiff and for injunction restraining the decree holders from executing the said decree, those prayers were struck off at the time of initiation of the suit.

2.Pending the suit in O.S.No.64 of 2015, the plaintiff came up with an application in I.A.No.190 of 2019 seeking amendment of the plaint to incorporate the relief regarding declaration that the decree in O.S.No.52 of 2010 is illegal and not binding on him. This application was resisted by the defendants contending that the relief itself is barred by limitation and therefore, it cannot be introduced by way of amendment. Though it was a pre-trial amendment, the learned trial Judge taking into account, the conduct of the plaintiff in striking off the relief at the time of institution of the suit and the fact that the relief will be time barred on the date of filing of the amendment application, dismissed the amendment application.



3.I have heard Mr.J.Pradeep, learned counsel appearing for the petitioner.

4.Mr.J.Pradeep would contend that he has filed the suit for declaration of title as a purchaser from one of the sharers prior to the institution of the suit in O.S.No.52 of 2010. The decree holders having obtained a collusive decree in the partition suit in O.S.No.52 of 2010 are now attempting to execute the decree and therefore, it has become necessary for him to incorporate the relief of declaration as to the validity of the decree in O.S.No.52 of 2010 in his suit. I do not think that the apprehension of the learned counsel is justified.

5.Admittedly, the petitioner has purchased the property on 30.06.2010 from one of the sharers, the suit in O.S.No.52 of 2010 has been instituted on 26.07.2010 after the said purchase. Therefore, the plaintiff in O.S.No.52 of 2010 ought to have impleaded the petitioner herein as a purchaser prior to the suit. The petitioner herein can definitely take advantage of such non impleadment to contend that the decree is not binding on him and it is unnecessary for him to seek a declaration.

6.In view of the above, I do not see any merit in the revision, the revision is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

vs

To:

1.The Subordinate Judge,
Harur, Dharmapuri District.

2.The Section Officer,
VR Section,
Madras High Court, Chennai.

+1cc to Mr.J.Pradeep, Advocate SR.No.68823

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NMI(CO)
GN(20/01/2022)