

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2124 of 2017
and C.M.P.No.10150 of 2017

- 1.Govindaswamy
- 2.Poovathal
- 3.Saraswathi
- 4.Mayangathal

... Petitioners

Vs.

- 1.A.Ganesan
- 2.T.Manigandan
- 3.A.Subramaniam
- 4.The Sub-Registrar
Avinasi.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 21.02.2017 made in I.A.No.160 of 2017 in O.S.No.413 of 2010 on the file of the District Munsif Court, Avinasi.

For Petitioners : Mr.K.S.Karthik Raja
For R1 to R3 : No appearance
For R4 : Mrs.Dr.S.Suriya
Government of Counsel (CS)

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).)

Civil Revision Petition is filed against the fair and decretal order dated 21.02.2017 made in I.A.No.160 of 2017 in O.S.No.413 of 2010 on the file of the District Munsif Court, Avinasi.

2.The petitioners are plaintiffs and the respondents are the defendants in O.S.No.413 of 2010 on the file of the District Munsif Court, Avinasi. The petitioners have filed the said suit against the respondents for injunction restraining the respondents 1 to 3 from in any manner executing and registering any document in respect of the suit properties before the 4th respondent, create encumbrance over the properties and restraining the respondents 1 to 3 from interfering with the petitioners' peaceful possession and enjoyment of the suit properties. The

2nd respondent filed written statement, which was adopted by the respondents 1 and 3 and are contesting the suit. The trial commenced. On behalf of the petitioners, they examined one witness as P.W.1 and suit was posted for examination of further witnesses on behalf of the petitioners. At that stage, the petitioners filed present I.A.No.160 of 2017 under Order VI Rule 17 of C.P.C. to amend the plaint to include the relief of cancelling the agreement of sale dated 12.08.2010 registered as document No.1800/2010 on the file of 4th respondent.

3.According to the petitioners, the respondents 1 to 3 without any right, have executed agreement of sale dated 12.08.2010 registering as document No.1800/2010. The said agreement is reflected in the Encumbrance Certificate relating to the suit properties. This creates a cloud over the title of the petitioners and hence they filed present application to amend the plaint. The respondents did not file any counter affidavit. The learned Judge considering the averments in the affidavit and judgment of this Court, dismissed the I.A. holding that by this

amendment, the nature of the suit will be changed and the petitioners are introducing new case.

4. Against the said fair and decretal order dated 21.02.2017 made in I.A.No.160 of 2017 in O.S.No.413 of 2010, the petitioners have come out with the present Civil Revision Petition.

5. The learned counsel appearing for the petitioners contended that the petitioners have filed suit for injunction restraining the respondents 1 to 3 from creating any document in pursuance of the agreement of sale dated 12.08.2010 registered as document No.1800/2010 before the 4th respondent. The respondents 1 to 3 have no right in the suit properties. The registration of agreement of sale is entered in the Encumbrance Certificate, which creates cloud over the title of the petitioners. The learned Judge failed to see that the petitioners at the time of filing of the suit, were under the impression that permanent injunction against the respondents 1 to 3 will protect the petitioners' right title and possession

of the properties. Only when they approached the Bank for availing loan, the Bank officials informed the petitioners that unless the agreement of sale is cancelled, they will not get any loan or mortgage the suit properties. In view of the same, the petitioners were advised to amend the plaint incorporating the prayer for cancelling the agreement of sale created by the respondents 1 to 3 and prayed for allowing the I.A.

6.Though the respondents 1 to 3 have entered appearance through the counsel, when the matter is taken up for hearing, there is no representation for them.

7.Heard the learned counsel appearing for the petitioners as well as the learned Government Advocate appearing for the 4th respondent and perused the entire materials on record.

8.From the materials available on record, it is seen that the petitioners have filed O.S.No.413 of 2010 against the respondents for

injunction restraining the respondents 1 to 3 from in any manner executing and registering any document in respect of the suit properties before the 4th respondent, create encumbrance over the properties and restraining the respondents 1 to 3 from interfering with the petitioners' peaceful possession and enjoyment of the suit properties. In paragraph 12 of the plaint, the petitioners have stated that the 2nd respondent claiming himself to be son of one Chinna Thirumurthy, S/o.Avinashi Valayan, has created a Power of Attorney with one Rajammal @ Kamalam, Kamal Hasan and Bhuvaneswari in document No.1800/2010 before S.R.O., Avinashi and created a bogus agreement of sale dated 12.08.2010 in favour of the 1st respondent in collusion with the 3rd respondent. The petitioners have also stated that they came to know that the respondents 1 to 3 are trying to execute the sale deed based on the agreement of sale dated 12.08.2010. From these averments made in the plaint, it is seen that the petitioners were aware of the agreement of sale dated 12.08.2010 and said agreement being registered with 4th respondent. In spite of the same, they have not sought for any relief for

cancellation of the said agreement of sale at the time of filing of the suit itself. The petitioners have come out with present I.A. after commencement of trial. A party seeking amendment after commencement of trial must allege and prove that in spite of due diligence, they could not seek amendment before the trial commenced. In the present case, the petitioners were aware of the agreement of sale even at the time of filing of the suit and they did not seek any relief now sought for at that time itself.

9.From the above materials, it is seen that the petitioners are seeking declaration to cancel the agreement of sale, while earlier suit was filed only for permanent injunction. Considering the above, the learned Judge has rightly held that amendment changes nature of the suit and the petitioners are introducing a new cause of action. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.

10.For the above reasons, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

16.09.2021

Index : Yes/No
Internet: Yes/No
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To

The District Munsif
Avinasi.

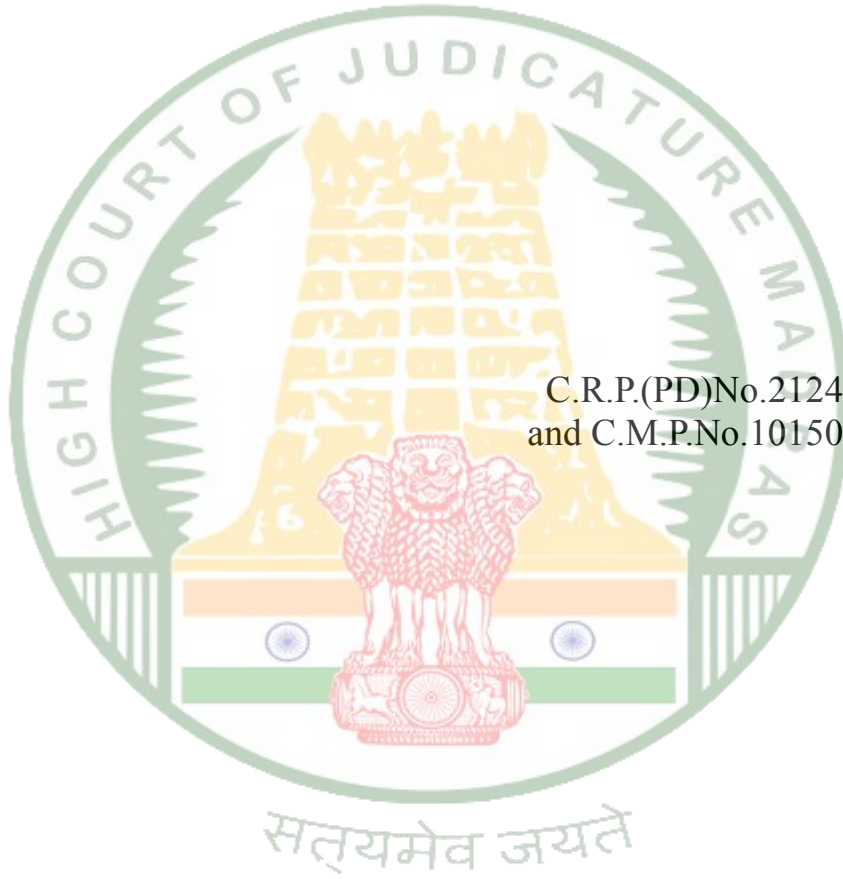


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V.M.VELUMANI,J.

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