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C.R.P. (PD) .Nos.3064 & 3065 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).Nos.3064 & 3065 of 2017

and

C.M.P.No.14376 of 2017

1.Palanisamy (died)

2.P.Velumani

3.Ganthimathi

.. Petitioners
(in both cases)

(Petitioners 2 & 3 brought on record as LR's of the deceased 1st petitioner viz., Palanisamy, vide order of this Court dated 05.10.2021 made in C.M.P.Nos.16104 & 16108 of 2021 in C.R.P.(PD).Nos.3064 & 3065 of 2017 respectively)

Vs.

Balasubramaniam

.. Respondent
(in both cases)

Common Prayer: These Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the fair and final order dated 30.06.2017 passed in I.A.Nos.445 & 446 of 2017 in O.S.No.95 of 2010 on the file of the District Munsif Court, Kangayam, Tiruppur District.



In both cases:

For Petitioners : Mr.S.Saravanan
For Respondent : Mr.V.Regunathan

COMMON ORDER

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

These Civil Revision Petitions are filed against the fair and final order dated 30.06.2017 passed in I.A.Nos.445 & 446 of 2017 in O.S.No.95 of 2010 on the file of the District Munsif Court, Kangayam, Tiruppur District.

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 1st petitioner is the defendant in O.S.No.95 of 2010 on the file of the District Munsif Court, Kangayam, Tiruppur District. The petitioners 2 and 3 are legal heirs of the defendant. The respondent filed the said suit against the defendant for declaration that he is the absolute owner of the suit property and for permanent injunction restraining the 1st petitioner from dealing with the property. The 1st petitioner filed written statement on



10.08.2010. Trial commenced and parties have let in evidence and closed their side. Arguments were advanced on behalf of both the parties. When the suit was posted for reply arguments, the respondent came out with two applications viz., I.A.No.445 of 2017 to re-open the case and I.A.No.446 of 2017 for amendment of the plaint to include the relief of declaration, declaring the sale deed dated 20.04.2009 as null and void. According to the respondent, he has made averments in the plaint that 1st petitioner got the sale deed executed fraudulently in his favour in order to defeat the interest of the respondent in the suit property. By inadvertence and mistake, the relief of declaration that sale deed dated 20.04.2009 as null and void is not sought for in the suit. In any event, the said relief is not deliberate. Unless such a declaration sought for is granted to the respondent, he would not be in a position to deal with the property in future. By amendment, the nature of the suit will not be changed and no further evidence is required in the suit and prayed for allowing I.A.No.446 of 2017. The 1st petitioner filed counter counter affidavit in I.A.No.446 of 2017 and denied all the averments and contended that the respondent was aware of the sale deed dated 20.04.2009 and in paragraph No.8 of the plaint, he made averments that he is not a party to the said sale deed and the same is not binding on him and he is ignoring



the sale deed. The sale deed is of the year 2009 and the respondent filed the present petition after 8 years, which is barred by limitation. By seeking the present relief, he is taking inconsistent stand and the same cannot be permitted. The respondent has not explained as to why he has not filed the applications before commencement of Trial. If the applications are allowed, de-nova trial has to be conducted and prayed for dismissal of both I.As.

4.The learned Judge considering the averments in the plaint, affidavit and counter affidavit, allowed both the I.As, holding that the suit itself is based on the sale deed dated 20.04.2009 executed in favour of the 1st petitioner and by amendment, character of the suit will not be changed. Considering the delay in filing the applications, the learned Judge on condition that the respondent pays a sum of Rs.1,000/- (Rupees One Thousand Only) in each of the application as cost payable to 1st petitioner.

5.Against the said common order dated 30.06.2017 passed in I.A.Nos.445 & 446 of 2017, the 1st petitioner has come out with the present Civil Revision Petitions.



6. Pending Civil Revision Petitions, the 1st petitioner died and the petitioners 2 and 3 were brought on record as legal heirs of the deceased 1st petitioner as per the order of this Court dated 05.10.2021 made in C.M.P.Nos.16104 & 16108 of 2021 in C.R.P.(PD).Nos.3064 & 3065 of 2017 respectively.

7. The learned counsel appearing for the petitioners reiterated the averments in the counter affidavit and further submitted that the respondent has not explained as to why he has not filed the applications before commencement of Trial. The respondent has not stated that inspite of due diligence, he could not file the applications earlier. The claim sought for by the respondent is barred by limitation. He further submitted that the learned Judge failed to consider this aspect and erroneously allowed both the applications and prayed for setting aside the order of the learned Judge and also prayed for allowing both the Civil Revision Petitions.

8. The learned counsel appearing for the respondent made his submissions in support of the order passed by the learned Judge and prayed for dismissal of both the Civil Revision Petitions.



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9. Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondent and perused the entire materials on record.

10. From the materials on record, it is seen that the respondent has filed the suit for declaration that he is the absolute owner of the suit property and for permanent injunction against the 1st petitioner. In paragraph No.8 of the plaint, the respondent has stated that the 1st petitioner by fraudulent means, got the sale deed dated 20.04.2009 executed in his favour in order to defeat the interest of the respondent. In the said paragraph, the respondent also stated that the said sale deed is not binding on the respondent and he is not a party to the sale deed. He is ignoring the sale deed. A reading of the plaint shows that the suit came to be filed in view of the sale deed dated 20.04.2009 in favour of the 1st petitioner. In the plaint itself, the respondent has stated that the same is not binding on him. In view of the same, the present amendment will not change the character of the suit. The respondent has made necessary averments in the plaint to that effect that said sale deed is fraudulent one and is not binding on the respondent. It is well settled that



Court must be extremely liberal in granting prayer for amendment, when the Court comes to the conclusion that if amendment is not allowed, the party who has sought for such amendment shall suffer irreparable loss and hardship. It is also well settled that there is no absolute rule that in every case, where relief is barred by limitation, the amendment could not be allowed. The Court has power to allow the amendment, if it is the view of the Court that by such amendment, it will serve ultimate cause of justice and avoid further litigation. The amendment in the pleading is a matter of procedure and granting and refusing to allow the amendment is discretion of the Court. The amendment may be allowed on such terms as may be just in order to avoid further litigation. In the present case, the learned Judge has considered the averments in the plaint as well as in the affidavit and counter affidavit and held that suit has been filed and relief sought for are only in view of the sale deed dated 20.04.2009 and by allowing the amendment, the nature of the suit will not be changed. The learned Judge exercising his discretion, allowed both the applications by giving cogent and valid reason and taking note of the fact that the respondent filed applications after considerable delay, awarded cost of Rs.1,000/- (Rupees One Thousand Only) in each petitions. Considering all the materials in its entirety, this Court is of the view that there



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is no error or irregularity in the order of the learned Judge warranting interference by this Court.

11.In the result, these Civil Revision Petitions stands dismissed.

Consequently, the connected Miscellaneous Petition is closed. No costs.

25.10.2021

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Index : Yes / No

Internet : Yes / No

To

The learned District Munsif,
Kangayam,
Tiruppur District.



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V.M.VELUMANI, J.
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