

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3381 of 2017

1.Kandasamy (died)

2.Malliga

3.Gowtham

.. Petitioners

(Petitioners 2 and 3 brought on record as legal heirs of the sole petitioner viz. Kandasamy vide Court order dated 29.09.2021 made in C.M.P.Nos. 15951, 15954 and 15957 of 2021 in C.R.P(PD)No. 3381 of 2017)

Vs.

K.P.Palanisamy

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 02.08.2017 made in I.A.No.233 of 2017 in O.S.No.82 of 2015 on the file of the District Munsif Court-cum-Judicial Magistrate's Court, Kodumudi.

For Petitioner : Mr.R.Prabakar

For Respondent : Mr.K.Karthikeyan

ORDER

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

Civil Revision Petition is filed against the fair and decretal order dated 02.08.2017 made in I.A.No.233 of 2017 in O.S.No.82 of 2015 on the file of the District Munsif Court-cum-Judicial Magistrate's Court, Kodumudi.

2.The 1st petitioner is defendant and respondent is plaintiff in O.S.No.82 of 2015 on the file of the District Munsif Court-cum-Judicial Magistrate's Court, Kodumudi. Pending Civil Revision Petition, the 1st petitioner died and his legal heirs were impleaded as petitioners 2 and 3. The respondent, who is elder brother of the 1st petitioner, filed the said suit for declaration and injunction. In the said suit, the respondent filed I.A.No.233 of 2017 for amendment of the plaint for relief of declaration of title in respect of the suit schedule properties.

3. According to the respondent, the 1st petitioner sold 'A' and 'B' suit schedule properties to the respondent by two sale deeds dated 15.09.1983, 18.06.1991 and release deed dated 03.07.1988. From the date of sale deeds and release deed, the respondent is in possession and enjoyment of the suit property. In the schedule of the sale deed, some mistakes have crept in with regard to survey numbers. Taking advantage of the said mistake, the 1st petitioner is creating problem and is interfering with peaceful possession and enjoyment of the respondent. In view of the same, the respondent filed the suit for the relief stated therein. Subsequently, the respondent came to know that he has to seek relief of declaration and hence, filed present I.A.

4. The 1st petitioner filed counter affidavit and stated that the respondent is introducing a new case by way of amendment. By this amendment, the nature and character of the suit will be changed. The respondent is introducing new cause of action and prayed for dismissal of the said I.A.

5.The learned Judge considering the averments in the affidavit, amendment now sought for and judgment of the Hon'ble Apex Court reported in **CDJ 2004 SC 872 [Pankaja and another vs. Yellappa (D) legal heirs and others]**, allowed the I.A. imposing cost of Rs.1,000/- on the respondent.

6.Against the said fair and decretal order dated 02.08.2017 made in I.A.No.233 of 2017 in O.S.No.82 of 2015, the petitioners have come out with the present Civil Revision Petition.

7.The learned counsel appearing for the petitioners contended that the respondent filed an application for amendment belatedly after evidence of 1st petitioner was completed and when the suit was posted for evidence of respondent. The 1st petitioner filed written statement on 15.06.2015. Only after two years of filing written statement, the respondent has come out with present application. The respondent was not vigilant enough and has not filed I.A. at the earliest. The amendment

to C.P.C. is introduced only to prevent such delaying tactics as adopted by the respondent. By the amendment now sought for, the respondent is introducing a new case and new cause of action. The learned Judge failed to appreciate the delay in filing the application, the respondent is introducing new cause of action and prayed for allowing the Civil Revision Petition.

8.The learned counsel appearing for the respondent made submissions in support of the order of the learned Judge and prayed for dismissal of the Civil Revision Petition.

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 suit for declaration to declare that S.No.379/15 - 0.09.0 hectares -

Rs.0.18 mentioned in the sale deed dated 15.09.1983 bearing document No.832/1983 and S.No.324/8 – 0.17.5 hectares – Rs.9.72 mentioned in the release deed dated 03.07.1988 bearing document No.361/1988 on the file of the Sub-Registrar, Kodumudi, are wrong and S.No.379/16 – 0.09.0 hectares – Rs.18/- and S.No.325/11 – 0.19.50 hectares – Rs.10.32 are correct and for injunction. According to the respondent, the 1st petitioner is his younger brother and in the Panchayat, a partition was effected between the 1st petitioner and respondent and the suit property was allotted to the 1st petitioner. The 1st petitioner by two sale deeds dated 15.09.1983 and 18.06.1991 sold portion of the suit properties allotted to him to the respondent. By the deed of release dated 03.07.1988, the 1st petitioner released other portion of the property to the respondent. By these three documents, the respondent has become absolute owner of the suit property. There were some mistakes crept in, in the survey numbers mentioned in the sale deed dated 15.09.1983 and release deed dated 03.07.1988. The 1st petitioner taking advantage of the same is trying to interfere with the peaceful possession and enjoyment of the respondent in

the suit property. On these averments, the respondent filed the suit for declaration as mentioned above. The 1st petitioner in the written statement denied title of the respondent and also filed O.S.No.163 of 2015 in June 2015 for partition against the respondent. In view of denial of title of the respondent to the suit property, the respondent has filed present I.A. for amendment to include the relief of declaration of title.

11.It is well settled that when the title is denied, the proper relief to the party is declaration of title. It is well settled that in the facts and circumstances of the case, the amendment of the plaint to include the relief of declaration can be granted even at the appellate stage. The Court has to consider all the materials placed before it and pass orders with regard to amendment with relief of declaration of title. There is no straight jacket formula either to allow or reject the application for amendment. In the present case, the respondent has made averments in the plaint with regard to his title, he acquired title by two sale deeds and release deed. The respondent is not seeking to amend the plaint by

introducing new case or new cause of action. Based on the averments already made in the plaint and cause of action, the respondent has filed present I.A. The respondent is not introducing any new case or new cause of action. In view of the same, the contentions of the learned counsel for the petitioners that respondent is introducing new case and new cause of action are not acceptable. The learned Judge considering the entire materials placed before him in proper perspective and by giving cogent and valid reason, allowed I.A. imposing cost of Rs.1,000/- on the respondent.

12.Considering the entire materials and the fact that the respondent has filed present I.A. after two years of filing of the written statement, after commencement of trial and when the suit was posted for examination of witnesses on behalf of the respondent, the cost awarded by the learned Judge is meagre. Therefore, the cost awarded by the learned Judge is enhanced to Rs.6,000/-. The respondent is directed to pay the balance amount of Rs.5,000/- (Rupees Five Thousand only) to

the counsel for the petitioners within three weeks from the date of receipt of a copy of this order.

13. With the above directions, the Civil Revision Petition stands disposed of. No costs.

22.10.2021

Index : Yes/No
Internet: Yes/No
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To

The District Munsif-cum-Judicial Magistrate
Kodumudi.

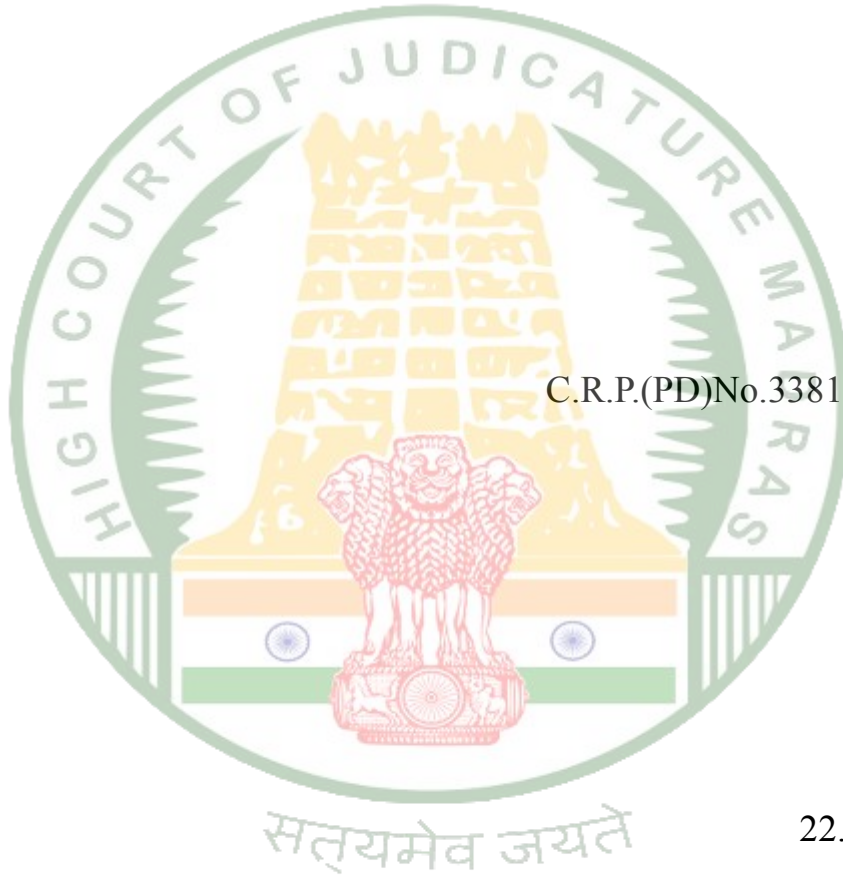


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V.M.VELUMANI,J.

Kj



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