

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.07.2021

Coram:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRP(PD).No.4312 of 2018

AND

CMP.No.23590 of 2018

1.R.Rathinavelu
2.P. Rajamanickam
3.P.Kumar
4.Rani

... Petitioners

Vs.

1.P.A.Sankaramani
2.P.S.Narayanan
3.S.Prasad
4.P.A.Seetha
5.A.Gowri
6.K.S.Venugopal
7.K.N.Krishnan
8.S.Nandagopal
9.K.V.Sundaram

(Represented by power agent A. Ramakrishnan)

10.Jagadeeswaran
11.C.Ramakrishnan
12.Dhanalakshmi
13.Minor.Naveen Rajan
14.Minor Deepika

(Respondents 13 & 14 are

represented by R-12/mother/Dhanalakshmi) ...Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the order of the learned First Additional Subordinate Judge, Coimbatore in I.A.No.645 of 2018 dated 20.09.2018 confirming the fair and decreetal order in O.S.No.359 of 2011.

For Petitioners : Mr.C.R.Prasanan

For Respondents : Mr.D.Ravichander - R1 to R9

Not ready in notice - R10 & R11

Given up - R12 to R14

ORDER

This Civil Revision Petition has been filed challenging the order passed by the learned First Additional Subordinate Judge, Coimbatore in I.A.No.645 of 2018 dated 20.09.2018 confirming the fair and decreetal order in O.S.No.359 of 2011, thereby dismissing the petition seeking leave to file an additional written statement. The petitioners are the defendants 1 to 3 and 10. So, the respondents 1 to 9 are the plaintiffs.

WEB COPY

2. While pending suit, the petitioners sought for leave to file an additional written statement which was denied by the court below and aggrieved by the same, the present petition is filed.

3. The learned counsel for the petitioners would submit that the suit has been filed seeking several declarations and permanent injunction in respect of the suit property. Further, they prayed for a declaration that the suit property should be declared as a common road. On receipt of suit summon, the petitioners filed a written statement on 05.03.2012 and also made a counter claim for the suit property. After cross-examination of PW1, the petitioners came to know about the properties with regard to the sale deeds executed by the 5th defendant in favour of the 6th defendant. Therefore, the petitioners filed a petition seeking leave to file an additional written statement. The relief prayed by the plaintiffs as well as the petitioners are one and the same, to declare the sale deed executed by the 4th defendant in favour of the defendants 5 and 6 as null and void. There is absolutely no prejudice would be caused to the respondents 1 to 9 herein if the petitioners are allowed to file their additional written statement. He further submitted that by way of an additional written statement, he wanted to pray specific plea on 13.01.2010. The 4th defendant entered into a varthamana agreement with the 5th defendant agreeing to sell a portion of the suit property subject to terms and conditions. As as per the terms and conditions, the 5th defendant agreed

to purchase a portion of the suit schedule property and 4th defendant undertook to execute a sale deed in favour of the defendants 5 and 6 on acceptance of the post-dated cheques issued by the 5th defendant towards the sale consideration. Accordingly, sale deeds were executed in favour of the defendants 5 and 6 and the cheques were presented for collection. The same were returned dishonoured. As per the agreement, if the amount not realised, then sale deeds would revoke automatically. So, these are all the defences to be included in the additional written statement.

4. In support of his contention, he also relied upon the following judgments:-

(i) 2007 (3) CTC 400 (Usha balashaheb Swami and others Vs. Kiran Appasao Swami and others);

(ii) 2014 SCC Online Mad 6785 (Boopathy and another Vs. Palaniammal) and

(iii) 2016 (4) CTC 750 (Devendran and others Vs. P.v.Palani).

5. Per contra, the learned counsel for the respondents 1 to 9 submitted that the suit has been filed in the year 2011 and the first written statement was filed as early as on 05.03.2012. Even at the time of filing the written statement, the petitioners had the present defence and even then, they did not bring it in the earlier written statement. The present petition has been filed after examination of PW1, that too, after 6 years from the date of the original written statement. He further submitted that during pendency of the suit, the alleged gift deeds have been executed on the basis of the sale deed executed by the 4th defendant in favour of the defendants 5 and 6. The alleged gift settlement deeds are sham and nominal and not binding the respondents 1 to 9 herein. After examination of PW1, the petitioners herein, intended to introduce a new plea that is not permissible under any law. Therefore, the court below had rightly dismissed the petition and nothing warrants to interfere by this court.

WEB COPY

6. In support of his contention, he relied upon the judgments reported in

1) 2007 (1) CTC 586, (R.S.Nagarajan Vs. R.S. Gopalan & Others);

2) 1999 (3) CTC 52, (Subramanian & Others Vs. Jayaraman) and

3) 2005 (1) CTC 563, (Devanbu Vs. Sundara Raj & Others).

7. Heard Mr.C.R.Prasanan, learned counsel for the petitioners and Mr.D.Ravichander, learned counsel for the respondents R1 to R9.

8. The petitioners have filed a petition seeking leave to file an additional written statements in the suit. Admittedly, the petitioners already filed the written statements on 05.03.2012 and after cross-examination of PW1, the present petition has been filed seeking permission to receive an additional written statement.

9. On perusal of the additional written statement sought to be filed revealed that as early as on 13.01.2011, the 4th defendant had entered into a varthamana agreement with the 5th defendant, who agreed to sell a portion of the schedule mentioned property subject to the terms and conditions. Accordingly, the 4th defendant received the post-dated

cheques issued by the 5th defendant and executed the sale deeds. Thereafter, when the cheques were presented for collection, they were returned dishonoured for the reason “funds insufficient”. As per the agreement, the sale deeds are vitiated for want of sale consideration. Therefore, on the strength of the alleged sale deeds, the gift deeds have been executed in favour of Perur Chettipalayam Town Panchayat by the defendants 5 and 6.

10. In fact, the respondents 1 to 9 also prayed for a declaration declaring those sale deeds as null and void on different set of facts. The defendants 1 to 3 and 10 also sought for a declaration declaring those sale deeds as null and void on different set of facts. Therefore, the additional written statement sought for by the petitioners would not cause any prejudice to the respondents 1 to 9 herein.

11. The learned counsel for the petitioner has relied upon the judgment reported in

2007 (3) CTC 400 - Usha balashaheb Swami and others Vs. Kiran Appasao Swami and others);

The Hon'ble Supreme Court of India has held in paragraph Nos.18, 19 and 20 that the defendants are entitled to their respective shares and also to plead inconsistent stand by way of additional written statement and also by way of amendment.

12. In the case on hand, as stated supra, the petitioners by way of filing an additional written statement to support their counter claim, the sale deeds which were executed by the fourth defendant in favour of the defendants 5 and 6 are vitiated by non-payment of valid consideration. It would not cause any prejudice to the respondents 1 to 9. Therefore, the above judgments cited by the learned counsel for the petitioners is squarely applicable to the case on hand.

13. In so far as the judgments cited by the learned counsel for the respondents 1 to 9 are concerned, the new pleas cannot be introduced.

14. It is an admitted fact that the petitioners as well as the respondents 1 to 9 have taken similar pleas for declaration declaring those sale deeds executed by the fourth defendant in favour of the defendants 5 and 6 are null and void. Therefore, it would not amount to

introduction of any new pleas and as such, the judgments cited by the learned counsel for the respondents are not helpful to the case on hand.

15. In view of the above, the Civil Revision Petition is allowed and the order dated 20.09.2018 passed in I.A.No.645 of 2018 in O.S.No.359 of 2011 on the file of the First Additional Subordinate Court, Coimbatore, is set aside. On receipt of the additional written statement, the trial court is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order. However, the respondents 1 to 9 are also permitted to file a reply statement, if any. No costs. Consequently, connected miscellaneous petition is closed.

26.07.2021

Index: Yes / No

Internet: Yes/No

Speaking Order/Non-Speaking Order

gv

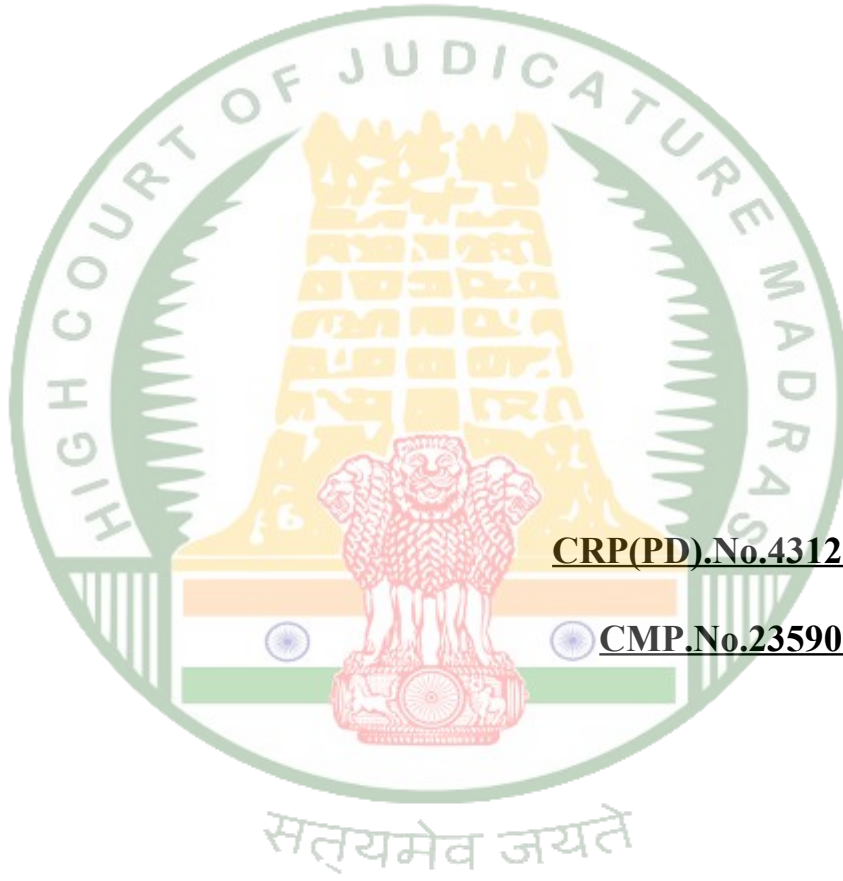
To

The First Additional Subordinate Judge,
Coimbatore

WEB COPY

G.K.ILANTHIRAIYAN.,J.

gv



CRP(PD).No.4312 of 2018
AND
CMP.No.23590 of 2018

WEB COPY

26.07.2021