



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 03.08.2021

Delivered On : 16.08.2021

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CORAM:

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) .No.514 of 2018
and
C.M.P. (MD) .No.2259 of 2018

Thangaraj

... Petitioner

Vs.

Periyammal

... Respondent

PRAYER: This Civil Revision Petition has been filed under Article 227 of Civil Procedure Code, to set aside the fair and decreetal order dated 25.01.2018 in I.A.No.38 of 2017 in A.S.No.14 of 2015 on the file of the learned Subordinate Judge, Kulithalai.

For Petitioner : Mr.B.Sekar
For Respondent : Mr.Raguvaran Gopalan

ORDER

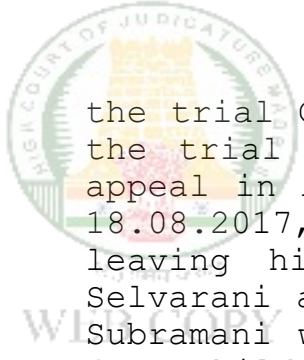
This petition has been filed to set aside the order in I.A.No.38 of 2017 in A.S.No.14 of 2015 dated 25.01.2018, on the file of the learned Subordinate Judge, Kulithalai.

2.The petitioner herein is the plaintiff and the respondent herein is the defendant in the suit. The revision petitioner herein has filed a suit in O.S.No.155 of 2009 for permanent injunction. The suit was dismissed by the learned District Munsif, Kulithalai. Against the same, the petitioner herein has filed an appeal in A.S.No.14 of 2015. Pending appeal, the petitioner herein has filed an application in I.A.No.38 of 2017 before the learned Sub Judge, Kulithalai, to permit the petitioner herein to withdraw the suit and the appeal suit with liberty to file a fresh appeal suit on the same cause of action.

3.Brief substance of the petition in I.A.No.38 of 2017 reads as follows:

The petitioner is the plaintiff and the suit was dismissed by

<https://hcservices.ecourts.gov.in/hcservices/>



the trial Court and the suit in O.S.No.155 of 2009 was dismissed by the trial Court. Against the same, the petitioner preferred this appeal in A.S.No.14 of 2015. The appeal is pending for enquiry. On 18.08.2017, one Subramani son of Chinnaya Pillai died interstate leaving his wife Periyammal and her two daughters Siva Jothi, Selvarani and two sons Karnagiri and Chandirasekar. The children of Subramani were omitted to be impleaded as parties in the suit. The four children of Subramani are trying to prevent the plaintiff from enjoying the suit properties. Five years prior to the institution of the suit, the petitioner had registered a settlement deed dated 03.04.2009, with regard to fourth and fifth items of suit properties in favour of his two sons. Possession was delivered on the date of settlement deed. At the time of entrusting the brief to the previous counsel, a copy of the settlement deed was handed over but the previous counsel included all the suit properties comprised in patta No.475 in Mullipadi Village due to over sight. It is only due to inadvertence, this flaw has crept into the plaint.

In the written statement, the respondent denied the title of the plaintiff in the suit properties. These technical defects can be rectified only by way of amendment of the plaint by including a prayer for declaration. This formal defects cannot be rectified in the plaint and in the memorandum of appeal that too after the efflux of three years. The petitioner constrained to withdraw this suit and the appeal with liberty to present a fresh suit on the same cause of action.

4.Brief substance of the counter in I.A.No.38 of 2017 reads as follows:

The contention of the petitioner are false. Only with an intention to harass the respondent, the petitioner has filed the suit and the appeal. The act of the petitioner is to shake the confidence, the people still have over the judiciary. On the date of plaint, the petitioner has not discussed the alleged settlement deed dated 03.04.2009, though the suit was filed only on 08.06.2009. The suppressions of material facts is fatal. In fact the petitioner is not having any right to execute the settlement deed in respect of suit properties. The alleged settlement deed is invalid and unenforceable. Only to drag on the case, the petitioner has filed this petition.

After the filing of the suit, the petitioner gave disturbance to the respondent and a criminal proceedings was also initiated. Though the petitioner claimed possession as on 08.06.2009, the personal affidavit reveals that he was not in possession of suit item 4 and 5 properties from 03.04.2009. Two sons of the petitioners have already filed a suit before the District Musnif, Kulithalai in O.S.No.210 of 2017. The prayer in the suit is only for permanent injunction. The appeal is pending for the past two years. The prayer for declaration of title is barred by limitation. By impleading the cause of action will change. The scope of the



suit will be defeated and prayed the petition to be dismissed.

5. After trial, the trial Court dismissed the petition. Against which, the revision petitioner has filed the Civil Revision Petition.

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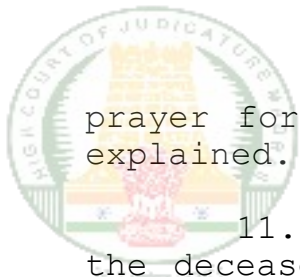
6. On the side of the revision petitioner, it is stated that for impleading necessary parties and for including a prayer for declaration of title and for deleting two of the properties, the petitioner should be permitted to withdraw the suit and appeal and to be permitted to file a fresh suit on the same cause of action.

7. On the side of the respondent, it is stated that the petitioner was well aware of the transaction even at the time of filing the plaint. He himself has executed a settlement deed in favour of his sons prior to the filing of the suit. But the same was suppressed in the suit. The suit was filed, as if the petitioner was in possession. But the petitioner has admitted that his sons were in possession only in the affidavit along with this petition. For suppression of material facts, no sufficient reason was stated by the petitioner. The respondent questioned the title even in the written statement filed by the respondent. But no steps was taken by the petitioner to amend and include a prayer for declaration of title. The limitation for a prayer of declaration of title expired and now the suit cannot be permitted to file as the prayer sought for is barred by limitation.

8. It is seen that the original suit was filed only for a prayer of bare injunction and the suit was dismissed. Before the filing of the suit, the petitioner has executed a settlement deed in favour of his two sons regarding the suit properties item 4 and 5. This fact was suppressed by the petitioner in the original suit. The original suit was filed, as if the petitioner was in possession of all the suit properties. But in the petition affidavit, the petitioner has admitted that his sons were in possession of the properties from the date of settlement.

9. On the side of the petitioner, it is stated that it is only a bonafide mistake. As per Order 23 Rule 1 of CPC, a petition can be filed only when the defects are formal. Possession of the plaintiff is the material fact to be decided in an bare injunction suit. The main root of the case is possession. Now the petitioner want to alter the same. This new contention raised by the petitioner changes the entire character of the suit and this cannot be entertained at the stage of appeal.

10. The respondent denied the title of the plaintiff in the written statement which were filed within a period of two months from the date of filing of the suit. The petitioner has not taken any steps to amend the plaint. Only after the expiry of seven years, the petitioner has come forward with this petition to include a



prayer for declaration of title. The reason for this delay is not explained.

11.The petitioner is well aware of the other legal heirs of the deceased Subramani and the reason for not impleading the other legal heirs of the deceased Subramani was not explained in the petition.

11.All the points raised by the revision petitioner are not maintainable. There is nothing sufficient enough to interfere in the order in I.A.No.38 of 2017 in A.S.No.14 of 2015 dated 25.01.2018, on the file of the learned Subordinate Judge, Kulithalai. Accordingly, this Civil Revision Petition is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MRN

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Subordinate Judge,
Kulithalai.

+1 CC to M/s.K.PRABHAKAR, Advocate (SR-26573[F] dated 17/08/2021)

C.R.P. (PD) (MD) .No.514 of 2018

16.08.2021

RD(6.09.2021) 4P 3C