



WEB COPY

CRP(MD)Nos.1604 and 1605 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.01.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(MD)Nos.1604 and 1605 of 2019

and

CMP(MD)Nos.8447 and 8448 of 2019

M.Pandiyammal

... Petitioner in both CRPs/Petitioner/
Plaintiff

vs.

1)B.Pandian

2)P.Muralikannan

3)P.Chokkanathan

4)D.Bhavani

5)N.Krishnapriya

... Respondents 1 to 5 in both CRPs/
Respondents 1 to 5/Defendants 1 to 5

6)A.Sundaravel

... 6th Respondent in CRP.1605/19/
6th Respondent/Proposed 6th Defendant

Petitions filed under Article 227 of the Constitution of India, against the order and decree made in I.A.Nos.568 and 569 of 2019 in O.S.No.139 of 2012 dated 15.07.2019 on the file of the 4th Additional District Judge, Madurai.

For Petitioner(both CRPs) : Mr.M.Thirunavukkarasu

For Respondents(both CRPs) : Mr.S.A.Ajmal Khan
R1 to R5

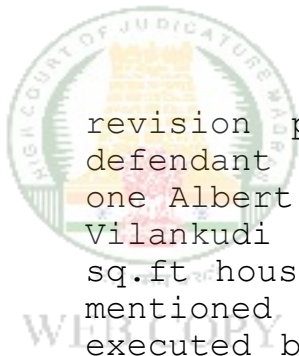
COMMON ORDER

Aggrieved by the dismissal of the amendment petition and impleading petition, these revision petitions have been filed by the revision petitioner/plaintiff.

2.The revision petitioner is the plaintiff in the suit in O.S.No.139/2012 which has been filed for partition of the suit properties. According to the petitioner, at the time of filing the suit, she omitted to add one more item of valuable property as 4th item of property described in the release deed dated 10.08.2007 and the said omission was not wilful. According to her, the property is a valuable house site and therefore she has filed I.A.No.568/2019 to amend the suit schedule to include the said omitted property in the original plaint and also filed I.A.No.569/2019 to implead the purchaser of the above said property, as a party defendant in the suit.

3.A counter affidavit has been filed by the 1st defendant/1st respondent herein, wherein, it has been specifically stated that the

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revision petitioner along with her father Packiam and the 1st defendant jointly executed a sale deed on 02.03.2000 in favour of one Albert Vijayarathinam in respect of a portion of the property in Vilankudi Village in S.No.45/2C1 measuring to an extent of 3045¾ sq.ft house site. Subsequently, the 1st defendant got the petition mentioned property through the release deed dated 10.08.2007 executed by the petitioner for due consideration, but suppressing the said release deed dated 10.08.2007, after expiry of more than 4 years therefrom, the revision petitioner issued a legal notice on 28.06.2012 demanding partition of the properties. On receipt of the said notice, the 1st defendant issued a reply notice dated 12.07.2012 stating the facts in respect of the release deed executed in favour of the 1st defendant. The revision petitioner has clearly stated in the plaint that she was shocked and surprised on seeing the release deed which averment by itself would prove that the revision petitioner was aware of the release deed and all the details about the ancestral properties.

4.He would further state that the petitioner has already filed an application in I.A.No.207/2013 to implead the respondents 2 to 5 herein as defendants in the main suit which was dismissed, against which, the petitioner filed CRP.No.878/2014 before this Court and the same was allowed with a direction to dispose of the main suit within a period of six months and thereafter, both sides evidences have been recorded and documents were marked and now the main suit is posted for arguments and in spite of number of adjournments granted for arguing the matter, now the revision petitioner has come up with the present applications. In the earlier occasion when the suit was posted for arguments, the petitioner filed I.A.No.1101/2018 seeking further examination of PW1 and the same was allowed and after examination of PW1, now again when the case has been posted for arguments, the petitioner has come out with the present petitions when there is a direction by this Court to dispose of the suit within a period of six months. The amendment petition has been filed to include the property which was sold to one Sundaravel/6th respondent herein and the said sale deed is a legally valid document and the petitioner has got no right to claim the same. The Court below after hearing both sides, dismissed the amendment petition and impleading petition, against which, the present revision petitions have been filed.

5.The learned counsel for the petitioner would state that in a suit for partition, all the properties have to be included and if any property is left out, then the suit will be dismissed on the ground of partial partition and therefore, the Court below ought to have allowed the present applications to avoid multiplicity of proceedings and the proposed amendment will not alter the character of the suit and no prejudice would be caused to the other side by virtue of such amendment and impleadment. He would further state that in a suit for partition, opportunity should be given to the



parties concerned to implead necessary parties and at any stage of the proceedings, necessary parties could be added and he would rely on a decision reported in 2009 (3) CTC 760, Balamani and another vs. S.Balasundaram.

6.The learned counsel for the respondents would state that the petitioner was well aware of the property sought to be included, even before filing of the present suit for partition and the Court below finding that when the suit was posted for arguments, the petitioner by filing petition after petition without making any arguments, has prolonged the case, dismissed the present petitions. Thus, he would pray that the impugned orders do not require interference by this Court.

7.Heard the learned counsel for the petitioner as well as the respondents.

8.Admittedly, the revision petitioner is the sister of the 1st respondent/1st defendant and the suit has been filed for partition and separate possession of the suit properties. In the suit, both side witnesses were examined and documents were marked and now the suit has been posted for arguments. At this stage, the revision petitioner has filed the present amendment petition to include the property finds place in the release deed dated 10.08.2007 and impleading petition to implead the purchaser of the said property as party defendant in the suit.

9.Perusal of record shows that the said release deed dated 10.08.2007 was marked as Ex.B1 by the defendants and the revision petitioner/plaintiff denied her signature in Ex.B1 and filed petition in I.A.No.207/2013 to implead the respondents 2 to 5 herein as party defendants which was dismissed by this Court on 18.02.2014, against which, CRP.No.878/2014 was filed and in that CRP, it was specifically contended that the petitioner has been filing petition after petition only to prolong the case and this Court has directed the Court below to dispose of the main suit within a period of six months, but thereafter, the petitioner disputing her signature in the release deed, filed I.A.Nos.458 and 653/2016 which were allowed on 07.11.2016 and the documents were subjected for comparison of the petitioner's signature by the officials of the Forensic Department. Thereafter, after completion of both sides evidence, when the suit was again posted for arguments on 18.12.2018, the petitioner filed I.A.No.1100/2018 to recall the plaintiff for further examination and another I.A.No.1101/2018 to reopen the evidence and the same were allowed on 01.03.2019 and after that, now the present petitions have been filed for amendment of the plaint and to implead the 6th respondent who is stated to have purchased the property based on the release deed for valid consideration. The Court below found from the records that the property which the petitioner sought to include in the suit schedule, is the property



finds place in the release deed and the petitioner is aware of the existence of the said property even before filing of the suit and therefore, when she has filed the partition suit itself, she ought to have included that property also for partition.

10. From the above discussions, it is very clear that the entire case revolves around the release deed dated 10.08.2007 and the petitioner is fully aware of the release deed and there is no explanation as to why the property sought to be included in the suit schedule, has not been included for partition at the time of filing of the partition suit and when the case has been posted for arguments, the petitioner has filed the present petitions. Though the learned counsel for the petitioner would rely on the judgment reported in 2009 (3) CTC 760, and would state that impleadment of necessary parties in a partition suit can be allowed at any stage of the proceedings, here, in the present case, the property sought to be included in the suit schedule finds place in the release deed and the said release deed has been marked as Ex.B1 and the petitioner has denied her signature therein and disputing her signature in the release deed, she filed I.A.Nos.458 and 653/2016 which were allowed on 07.11.2016 and thereafter, again filed petitions to reopen and recall PW1 which were also allowed and thereafter in 2019, have chosen to file the present amendment petition and impleading petition stating that due to inadvertent mistake, she omitted to add one more item of valuable property in the suit schedule and she came to know about the said omission only in 2019. In my opinion, the said stand of the petitioner does not reflect *bona fide* and therefore, the judgment relied on by the petitioner is not applicable to the present case. In the present case, the matter has been dragged on by filing number of petitions one after another and the present petitions have been filed only to harass the respondents/defendants and to prolong the proceedings and the learned Judge considering the entire aspect of the case and the entire events which had happened in the above suit, has dismissed the applications where I do not find any infirmity.

11. Accordingly, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

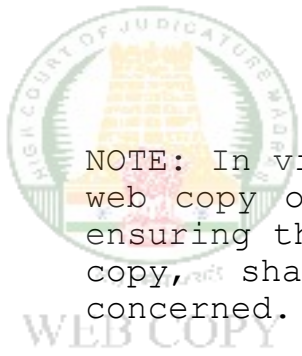
Assistant Registrar(CO)

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/ /2021

Sub Assistant Registrar(CS)

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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

The 4th Additional District Judge,
Madurai.

+1 CC to M/s.S.A.AJMAL KHAN, Advocate (SR-2554[F] dated
01/02/2021)

COMMONORDER MADE IN
CRP(MD)Nos.1604 and 1605 of 2019
DATED : 27.01.2021

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dks (CO)
TR(09.03.2021) 5P 3C