



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) (MD) No.2053 of 2021

and

C.M.P. (MD) No.10968 of 2021

A.Palpandi (Died)

1.Selvi

2.Priyadharshini

.. Petitioner/Petitioners/
Plaintiffs 2 & 3

-vs-

1.R.Rajaram

2.R.Pandian

3.Banumathi

4.Santhanapandi

.. Respondents/Respondents/
Defendants

Prayer :- Petition filed under Article 227 of the Constitution of India to call for the records relating with the executable order and fair order dated 06.10.2021 made in I.A.No.04/2021 in O.S.No.183/2011 on the file of the District Munsif, Andipatti.

For Petitioners : Mr.R.Suriyanarayanan

ORDER

This revision is filed by the plaintiffs, whose application in I.A.No.4 of 2021 in O.S.No.183 of 2011 was dismissed by the learned District Munsif, Andipatti by order dated 06.10.2021.

2.Pending the suit, the plaintiff, Thiru.A.Palpandi died and his legal heirs were brought on record as plaintiffs 2 and 3. The impugned application had been filed by plaintiffs 2 and 3 under the provisions of Order 23 Rule 1(3)(a)(b) of the Code of Civil Procedure to withdraw the suit filed by them in O.S.No.183 of 2011 giving liberty to file a fresh suit on the very same cause of action.

3.The facts in brief are as follows:-

3.1.The deceased 1st plaintiff had filed the above referred suit against the respondents herein to declare that he was the absolute

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owner of the suit schedule property as per the registered Sale Deed dated 03.09.2010; for a permanent injunction restraining the respondents/defendants from interfering with the peaceful possession and enjoyment of the suit schedule property; and for costs.

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4.It is the case of the petitioners/plaintiffs that the deceased 1st plaintiff has purchased the suit schedule property from the legal representatives of Singaraju, under a registered Sale Deed dated 03.09.2010. Singaraju had got the property under Settlement Deed dated 01.08.1984 executed by his mother Seeniammal and grandmother Karruppayi Ammal in his favour.

5.The further case of the revision petitioners is that from the date of purchase, the deceased 1st plaintiff has been in possession and enjoyment of the suit property. While so, the 1st respondent had filed a suit in O.S.No.18 of 2011 on the file of the District Munsif, Anditpatti, against the deceased 1st plaintiff and respondents 2 to 4 herein stating that the property belonged to his father Gopalswami Naicker under a document of the year 1942. The deceased 1st plaintiff would submit that he was a bona fide purchaser, who had perfected title and since his title was questioned, he had come forward with the suit in question.

6.The 1st defendant had filed a written statement *inter alia* stating that the property belonged to his father Gopalswamy by virtue of the document registered as Document No.909/1942 on the file of the Sub Registrar Office, Anditpatti. It is his case that neither the 1st plaintiff (deceased), nor his predecessor in title had right or title in the suit schedule property. The suit had been filed after the 1st defendant had filed a suit for injunction against the deceased 1st plaintiff and respondents 2 to 4 herein. The 1st respondent had stated that he was also filing an application for rejection of the plaint along with the written statement.

7.Pending the suit, petitioners 2 and 3 had taken out the impugned application and the basis on which the application was filed has been narrated in paragraph 3 of the affidavit filed in support of the impugned application.

8.It is the contention of the revision petitioners that in the plaint, the deceased 1st plaintiff, by at oversight, had wrongly mentioned the name of the deceased 1st plaintiff's vendor's father and further, there was some discrepancy in the description of the suit property. Therefore, for these reasons, they sought to withdraw the suit in O.S.No.183 of 2011 with liberty to file a fresh suit on the very same cause of action.

9.The 1st respondent had objected to the said application stating that the very suit had been filed on the basis of false allegation and when the suit has been listed for evidence on



18.07.2018, the same was dismissed for default since the plaintiff had failed to appear before the Court, and an application was filed to restore the suit, however, in this application, the contentions made in the affidavit filed in support of the impugned application have not been stated by the deceased 1st plaintiff. Therefore, the revision petitioners were trying to introduce a new case and the present application has been taken out, since the revision petitioners are fully aware that the suit, as filed would, fail. Therefore, he had sought for the dismissal of the said application.

10.The learned District Munsif, Andipatti, by order dated 06.10.2021, dismissed the said application stating that the present application has been filed 10 years after the filing of the suit and also holding that the petitioners herein have not come forward with details as to what was the discrepancy in the suit schedule and have simply stated that the suit schedule requires to be corrected. That apart, they have not stated as to who is the father of the deceased 1st plaintiff's predecessor in title. It is this order, that is, the subject matter of challenge before this Court.

11.Learned counsel for the petitioners would submit that the learned District Munsif, Andipatti, has totally overlooked the provisions of Order 23 Rule 1(3) of the Code of Civil Procedure and has simply dismissed the application on the basis of the counter filed by the 1st respondent herein. He would, therefore, submit that the order be set aside and the Civil Revision Petition be allowed.

12.Heard the learned counsel for the petitioners and perused the records.

13.The reason for seeking to withdraw the suit as projected in the affidavit filed in support of the application are two fold viz., (i) the name of the father's name of the deceased 1st plaintiff's predecessor in title has been wrongly mentioned; and (ii) there are discrepancy in the suit schedule property. The application has been filed invoking the provisions of Order 23 Rule 1(3) of the Civil Procedure Code, which reads as follows:-

"Order XXII Rule 1(3) Where the Court is satisfied,-

(a) that a suit must fail by reason of some format defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim."



14.The 1st respondent had specifically pleaded in his written statement that the deceased 1st plaintiff's predecessor in title had no right to the suit property and that his father Gopalswamy had got a title to the property on the basis of a document, which is of the year 1942. That apart, even prior to the filing of the instant suit, the 1st respondent had filed a suit for a bare injunction in O.S.No.18 of 2011 in which, the 1st defendant had set out his right to the property. His categorical case is that the Settlement Deed in favour of Singaraju and the sale by his legal heirs, thereafter, in favour of the deceased 1st plaintiff are void, since the 1st defendant's predecessor in title had obtained a right to the property as early as in the year 1942.

15.In the above circumstances, this Court is of the view that the reasons for seeking to withdraw the suit with liberty does not fall within the category prescribed under Order 23 Rule 1(3). The defect set out by the revision petitioners is not a formal defect, but a defect which goes to the root of the matter. The revision petitioners have not spelt out what is the discrepancy in the schedule of the property that they seek to correct. The name of the father of the vendor has also sought to be corrected, which in effect changes the nature of the suit and the subject matter of the suit. That apart, this application has been filed nearly 10 years after the filing of the suit and five years after the filing of the written statement by the 1st defendant. Therefore, I do not find any reason to set aside the order passed by the learned District Munsif, Andipatti, dated 06.10.2021 made in I.A.No.4 of 2021 in O.S.No.183 of 2011 and the same is confirmed.

16.Accordingly, this Civil Revision Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CRL)

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/ /2022

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 District Munsif Court, Andipatti.

C.R.P. (PD) (MD) No.2053 of 2021

Dated: 20.12.2021

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