



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) (MD) Nos.505 & 1746 of 2017

and

C.M.P. (MD) Nos.2387 & 9440 of 2017

WEB COPY

1.T.Bhavani

2.R.Sundara Rajulu

3.S.Girija

.. Petitioners/Petitioners/Plaintiffs

In both cases

Petitioners are represented by their

Power Agent, Dr.Sankari Raja Gopal.

-vs-

1.T.Paul Devadas

2.M.Sahul Hameed

3.S.Noor Jahan

.. Respondents 1 to 3/

Respondents 1 to 3/Defendants

in both cases

4.S.Pakkir Mohideen

.. 4th Respondent/4th Respondent/

3rd Party in CRP(PD) (MD) No.505/2017

Prayer :- Petitions filed under Article 227 of the Constitution of India to set aside the fair and decretal orders passed in I.A.Nos.821 and 931 of 2015 in O.S.No.56 of 2013 dated 23.12.2016 and 16.06.2017 respectively on the file of the Additional Sub-Court, Tirunelveli.

For Petitioners
(In both cases)

: Mr.H.Arumugam

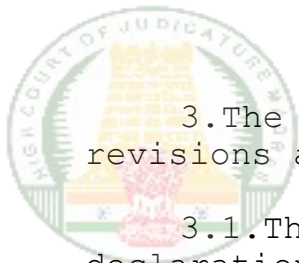
For Respondents
(In both cases)

: Mr.V.Meenakshi Sundaram
for Mr.D.Nallathambi

COMMON ORDER

The plaintiffs are the petitioners before this Court challenging the order dated 23.12.2016, passed in I.A.No.821 of 2015 in O.S.No.56 of 2013 (impugned in C.R.P.(MD) No.505 of 2017) against the order dismissing the plaintiffs' application to implead the 4th respondent as the 4th defendant in the above suit; and the order dated 16.06.2017, passed in I.A.No.931 of 2015 in O.S.No.56 of 2013 (impugned in C.R.P.(MD) No.1746 of 2017) against the order dismissing the plaintiff's application seeking amendment of the plaint.

2.For the sake of convenience, the parties are referred to as per their rank in the suit.

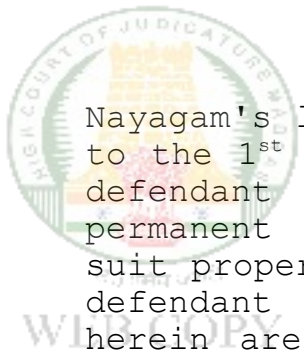


3.The brief facts, which have culminated in the filing of these revisions are as follows:-

3.1.The plaintiffs had filed the above referred suit for a declaration that they are the absolute owners of the suit II Item of property; for a permanent injunction restraining the 1st and 2nd defendants, their men and agents from encumbering or alienating the plaint schedule property; and for costs.

3.2.The suit I Item of property is the total extent of 6.09 acres comprised in S.No.158 in Saragam, Muthoor Village, Palayamkottai. The suit II Item of property is an extent of 4 acres out of this extent of 6.09 acres within specified boundaries.

3.3.The plaintiff/revision petitioners' contention is that the I Item of suit property belonged to four persons viz., Ramamoorthy, Subbiah, Narayanan and Radhakrishnan. The four of them had jointly executed a registered Sale Deed dated 21.03.1974 in favour of one Krishna Gandhi in respect of an extent of 4 acres from and out of the suit I Item of property, which has been more fully described as the suit II Item of property. Thereafter, the four of them had entered into a registered Partition Deed dated 20.08.1984 in respect of the remaining extent of 2 acres and 9 cents. This extent was allotted to the share of Ramamoorthy, Subbiah and Narayanan jointly. Thereafter, the said Krishna Gandhi had executed a registered General Power of Attorney in favour of one Arularasan on 14.11.1990 in respect of the suit II Item of property and on the basis of this power deed, the said Power Agent had sold the II item of property to the plaintiffs by means of a registered Sale Deed dated 18.01.1996 and from the date of their purchase, the plaintiffs are in absolute possession and enjoyment of the II Item of the suit schedule property. The 1st plaintiff had executed a registered General Power of Attorney in favour of one Sankari Raja Gopal on 07.05.2008 and the 2nd and 3rd plaintiffs have also jointly executed a General Power of Attorney in favour of the said Sankari Raja Gopal on 04.04.2008. It is the Power Agent, who has been managing the suit II Item of property. While so, the defendants, who had no manner of right, entitlement or interest in the II Item of property, started interfering with the plaintiffs' possession. One Saraswathi Ammal, daughter of Subbiah, one of the persons, who had purchased the property in the year 1974, had fraudulently executed a Sale Deed in favour of one Chellasamy and Antony Nayagam in respect of the entire extent of 6.09 acres (Suit I Item of property) under Sale Deed dated 14.09.1987. She claimed a right to the property on the basis of a registered Will dated 14.04.1985 executed by her father and also as per oral partition. However, on the date of the execution of the said Will, Subbiah had no right to the II Item of property, which had also been sold by him along with the three others under a Sale Deed dated 21.03.1974, to Krishna Gandhi. Therefore, any alienation by the said Saraswathi Ammal was void and does not convey any title to the defendants. Thereafter, it appears that the said Antony

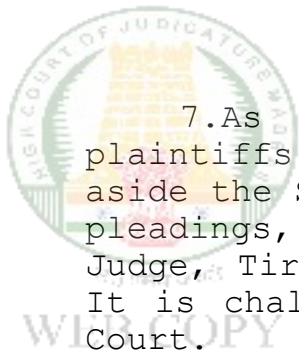


Nayagam's legal heir and Chellasamy had sold the I Item of property to the 1st defendant on 23.10.2000. It also transpires that the 1st defendant had filed a collusive suit in O.S.No.26 of 2010 for a permanent injunction against persons totally unconnected with the suit property. The defendants therein remained ex-parte and the 1st defendant had obtained a decree in his favour. The plaintiffs herein are not parties to the said suit. The 1st defendant also appears to have created a Power of Attorney in favour of the 2nd defendant on 07.12.2007 based upon which, the 2nd defendant had executed a registered agreement of sale in favour of his wife, the 3rd defendant on 23.05.2008 in respect of the I Item of property. The plaintiffs, on coming to know about this fraudulent sales with the Power of Attorney of the plaintiffs, had given a petition for patta transfer. Hence the suit.

4.The 2nd defendant had filed a written statement, which was adopted by defendants 1 and 3 *inter alia*, denying the claim of the plaintiffs.

5.In September, 2015, the plaintiffs had come forward with an application in I.A.No.821 of 2015 to implead the 4th respondent as the 4th defendant in the suit. In the affidavit filed in support of the said application, the plaintiffs would contend that only on 18.09.2015, they had come to learn about the Sale Deeds having been executed by the 1st defendant in favour of defendants 2, 3 and 4 on 28.03.2012. In fact, in the written statement, the defendants had not mentioned about the sale in favour of the 4th defendant. Therefore, since the 4th defendant was a necessary party, they sought to implead him as a party defendant. The said application was resisted by respondents 1 to 3. The 4th respondent, the proposed respondent remained ex-parte, though he was served with the notice.

6.The only defence put forward by defendants 1 to 3 was that though the plaintiffs had impleaded defendants 2 and 3, who had purchased the property on the very same day, they had not chosen to implead the 4th respondent, who had also purchased the property on the very same day. They would further argue that the suit against the 4th defendant has become barred by limitation and if he is impleaded now, his vested right would become affected. The learned Additional Sub Judge, Tirunelveli, on hearing the arguments on either side, proceeded to dismiss the same on the ground that no relief is sought for against the I item of property and the 4th defendant having been purchased the I item of property, the application to implead the 4th respondent is not maintainable. Further, in the suit, trial had commenced and the same had been posted on 29.09.2015 for further evidence on the side of the plaintiffs and therefore, the application seeking to implead the 4th respondent was not maintainable and accordingly, dismissed the said application.



7.As regards I.A.No.931 of 2015, which was filed by the plaintiffs to amend the plaint to include the relief of setting aside the Sale Deed in favour of respondents 2 to 4 and to amend the pleadings, the same was also rejected by the learned Additional Sub Judge, Tirunelveli, on the very same lines as I.A.No.821 of 2015. It is challenging the said orders, the plaintiffs are before this Court.

8.Learned counsel appearing for the respondents would argue that if the Court has to come to the conclusion that the amendment application has to be allowed, then the amendment could take effect only from the date on which the application for amendment has been filed.

9.Heard the learned counsel for the parties.

10.Admittedly, the plaintiffs' case is that their predecessors in title had purchased the property as early as in the year 1974 and therefore, the Will, which has been projected by the defendants is much after the execution of the Sale Deed in favour of the predecessors in title of the plaintiffs. The plaintiffs have also stated that they have come to know about the sale in favour of the 4th respondent only on 18.09.2015 and they have immediately taken steps to implead the said 4th respondent. Any order that would be passed in the suit will have a direct bearing on the rights, if any, of the 4th respondent and therefore, he has to necessarily be impleaded as a party to the proceedings. The learned Additional Sub Judge, Tirunelveli, has totally misdirected herself by stating that there is no relief claimed against the I Item of the suit property. The very case of the plaintiffs is that the II Item of suit property is a part of the I Item of property. Therefore, the observations of the learned Judge that no right has been claimed in respect of the suit I Item of property is rather strange. Therefore, the order dated 23.12.2016, passed in I.A.No.821 of 2015 has to necessarily be set aside and accordingly, is set aside and C.R.P.(PD) (MD) No.505 of 2017 is allowed.

11.The plaintiffs have sought for a declaration that the sale in favour of respondents 2 to 4 is null and void. The suit has been filed in the year 2013 and the application for amending the plaint has been filed in the year 2015. Adequate reasons have been given in the affidavit filed in support of the application viz., I.A.No.931 of 2015. Even in the original plaint, the plaintiffs have taken out a defence that the sale in favour of defendants 1 to 3 is null and void, since the sale in favour of the plaintiffs' predecessors in title had taken place much earlier and with reference to the 4th respondent, they would submit that knowledge about the sale was came only on 18.09.2015.

12.As regards I.A.No.931 of 2015, the only objection taken by
<https://hds.ces.eas.gov.in/cservices> learned counsel for the respondents was that the amendment



should take effect only from the date of filing of the application, since according to the defendants, this remedy was available even on the date of filing of the plaint.

13. Since *prima facie* there is a substance in the argument, the order dated 16.06.2017, passed by the learned Additional Sub Judge, Tirunelveli, in I.A.No.931 of 2015 is also set aside and C.R.P.(PD) (MD) No.1746 of 2017 is allowed making it clear that the amendment will take effect from the date of filing of the amendment application.

14. In the result, both the Civil Revision Petitions are allowed on the following terms:-

(i) The order dated 23.12.2016, passed in I.A.No.821 of 2015 is set aside;

(ii) The 4th respondent is impleaded as the 4th defendant in the suit in O.S.No.56 of 2013 on the file of the Additional Sub Judge, Tirunelveli;

(ii) The order dated 16.06.2017, passed in I.A.No.931 of 2015 is also set aside; and

(iv) The plaintiffs are permitted to amend the plaint, which shall take effect from the date of filing of the amendment application. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /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 Additional Sub Judge,
Tirunelveli.

+1 CC to M/s.H. ARUMUGAM, Advocate (SR-36542[F] dated 30/11/2021)

+1 CC to M/s.D. NALLATHAMBI, Advocate (SR-36569[F]
dated 30/11/2021)

C.R.P. (PD) (MD) Nos.505 & 1746 of 2017

Dated: 29.11.2021

VR (CO)

GC (23.12.2021) 6P 4C