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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2022

CORAM:

THE HONOURABLE Mrs.JUSTICE J.NISHA BANU

C.R.P. No. 2371 of 2015
and MP No.1 of 2015

1.Pera Gounder (died)

2.Kumaran ... Petitioner

(2nd petitioner has been brought on record
as LR of the deceased sole petitioner
vide order of the Court dated 30.01.2020
made in CMP No.27562, 27564 and 27567/2019)

Vs.

1.Duraisamy

2.Senthilnathan

3.Pachamuthu

4.Kumar

5.Ambika

6.Pachamuthu

7.Shanmugam

8.Sivalingam

... Respondents

(R7 and R8 have been impleaded
as LR's of the deceased sole petitioner
viz., Pera Gounder as per the order of
this Court dated 30.01.2020 made in
CMP Nos.27562, 27564 and 27567/209)

Prayer: Civil Revision Petition is filed under Article 227 of
the Constitution of India against the fair and decreetal order
dated 07.03.2015 passed in I.A.No.637 of 2014 in O.S.No.110 of
2010 on the file of the Subordinate Court, Sankari.

For Petitioner : Mr.T.Saikrishnan for
M/s.Sai Bharath and Ilan

For Respondents : Mr.N.Manokaran



ORDER

This civil revision petition has been filed against the fair and decreetal order dated 07.03.2015 passed in I.A.No.637 of 2014 in O.S.No.110 of 2010 on the file of the Subordinate Court, Sankari, thereby dismissing the petition.

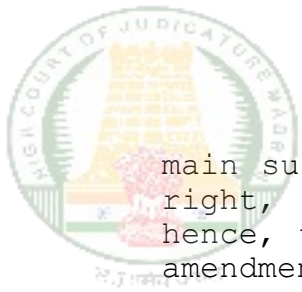
2. The petitioner is the plaintiff. He filed a suit in O.S.No.110 of 2010 seeking a direction to execute and register a conveyance of sale in favour of the plaintiff and for a permanent injunction. The said suit is pending for disposal. While so, the plaintiff filed a petition in I.A.No.637 of 2014 seeking to amend the plaint.

3. The plaintiff has filed the interlocutory application for amending the plaint after a period of nearly four years and after the chief examination was over and at the stage of cross examination of D.W.2. The said application was filed to amend the plaint to the effect of declaring the documents created by the defendant in favour of the respondents 2 to 6 on various dates as null and void. However, the said petition was resisted by the defendants by stating that the chief examination of all the witnesses was over; documents were marked and at the time of cross examination of D.W.2 only, the said application has been filed. The defendants raised objections by stating that considering the period of limitation, the said application is not at all maintainable.

4. The trial Court, after considering the fact that if the application is allowed, it will affect the right of the defendants and on the ground of limitation, dismissed the said application. Challenging the same, the present petition has been filed by the petitioner/plaintiff.

5. The learned counsel for the petitioner would urge the following grounds:

The Court below erred in holding that the petitioner had knowledge about the transactions between the respondents 1 and 2 to 6 vide sale deeds dated 17.10.2008, 28.10.2008, 11.11.2009 and 16.11.2009 and the petition to amend the plaint is barred by limitation. Since the respondents 2 to 6 are necessary parties, the application to implead the respondents 2 to 6 has been allowed. While the said application has been allowed, the dismissal of the present application to amend the plaint would cause prejudice to the petitioner/plaintiff. The trial Court ought to have seen that the petitioner is having every right to challenge the sale deeds executed by the 1st defendant in favour of the defendants 2 to 6 and hence, the petitioner is having every right to file the application till the disposal of the



main suit. When the main prayer in the suit is for pre-emptive right, the sale deeds have to be necessarily set aside and hence, the trial Court ought to have allowed the application for amendment and prayed for setting aside the order of dismissal.

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6. The learned counsel for the respondents/defendants would contend that the findings of the trial Court need not be interfered with. The trial Court, considering the facts and circumstances of the case and considering the fact that the plaintiff has filed I.A., after a lapse of four years, which is barred by limitation, dismissed the I.A. and hence, the order of the trial Court holds the field. To substantiate the said contention, the learned counsel for the respondents relied on the following judgments:

(i) 2015 (6) CTC 562 [L.C.Hanumanthappa v. H.B.Shivakumar]

(ii) 2013 (9) SCC 485 [Mashyak Grihnirman Sahakari Sanstha Maryadit v. Usman Habib Dhuka & ors.]

(iii) 2021 (5) CTC 727 [Mashyak Grihnirman Sahakari Sanstha Maryadit v. Usman Habib Dhuka & ors.]

7. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

8. It is seen that the trial Court, after considering the arguments advanced on both sides and after going through the materials on record, rightly dismissed the Interlocutory application by giving reasons. It appears that the amendment sought for by the petitioner reflects his after thought and the petitioner ought to have asked for at the time of filing the suit itself, when the petitioner alleges that the first respondent/first defendant fabricated the documents and registered the sale deeds on different dates with the respondents 2 to 6. Further more, as per Article 58 of the Limitation Act, the amendment application is barred by limitation. Further, it is seen that after a period of nearly four years, the petitioner has filed the amendment application, ie., after the chief examination is over, documents have been marked and after one witness has been cross examined. Thus, the trial Court rightly rejected the application to amend the plaint and no interference is warranted at the hands of this Court. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-CCC)

//True copy//

Sub Assistant Registrar



RR

To

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1.The Subordinate Court, Sankari.

+lcc to Mr.N.Manokaran, Advocate SR.No.7895

C.R.P.No.2371 of 2015

GPL (CO)

GMV (17/03/2022