



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 19.12.2022

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYANC.R.P. (PD) No. 454 of 2021andCMP.No.3956 of 2021

1. Guberan,
2. Santha,
Petitioners

..

Versus

1. Balakrishnan,
2.Venkatesan,
Kesavan (Died)
3. Kannan,
4. Srinivasan
...Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 11.12.2020 made in I.A.No.1 of 2020 in O.S.No.444 of 2004 on the file of the District Munsif, Attur.

For Petitioners : Mr. P. Jagadeesan
For Respondents : Mrs. R. Poornima for RR1 to 3.
: No Appearance for R4



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ORDER

This Civil Revision Petition has been filed by the petitioners herein to set aside the fair and decretal order dated 11.12.2020 made in I.A.No.1 of 2020 in O.S.No.444 of 2004 on the file of the District Munsif, Attur.

2. The petitioners herein are the Defendants 2 and 4 and the respondents herein are the plaintiffs in O.S. No.444 of 2004.

3.For the sake of convenience, the parties are referred to as per the rank cited before the Court below.

4. The case of the petitioners is that the plaintiffs have filed the suit in O.S. No.444 of 2004 against the defendants for partition and for separate possession of their 96/147 shares in the suit properties and in the suit, the 1st plaintiff had been examined in Chief as P.W.1 on 19.08.2019 and in the meanwhile, the defendants filed additional written statement on 04.12.2019 stating that 4th defendant filed a suit in O.S. No.122 of 2000 on the file of the same Trial Court for the relief of declaration to declare the



title of the property bearing Survey No.255/11, extent acre 0.22 cents. The

Court below passed the Judgment and Decree dated 19.09.2000 in favour of the plaintiffs/petitioners herein in O.S. No.122 of 2000. Further, the suit in O.S. No.444 of 2004 was posted for P.W.1 cross continuation. After knowing the aforesaid facts, the plaintiffs have filed I.A. No.1 of 2020 under Order 6, Rule 17 and under Section 151 of CPC to amend the plaint, as they failed to incorporate the necessary pleadings with a relevant prayer to seek declaration that the Judgment and Decree in the O.S. No.122 of 2000 is null and void and will not bind their share. Having considered the submissions of the learned counsel on either side and perusing the records placed by both the parties, the Trial Court allowed the aforesaid application by order dated 11.12.2020 to amend the plaint in O.S. No.444 of 2004. Being aggrieved by the aforesaid order, the defendants 2 and 4 have filed the present Civil Revision Petition to set aside the same.

5. The learned counsel for the petitioners would submit that the proposed amendment sought for by the plaintiffs is highly belated and would change the very nature and character of the suit. The proposed amendment being post-trial one, the same cannot be allowed and further



the 3rd defendant namely Periyasamy, being one of the co-sharer, he has got right to execute the gift deed in favour of his legally wedded second wife and as such, the Gift Deed in favour of the 4th defendant is legally valid and hence, in view of the Judgment and Decree dated 19.09.2000, the plaintiffs cannot seek for declaration as null and void the same. In the absence of any pleadings in the plaint regarding the Judgment and Decree in O.S. No.122 of 2000, the amendment of prayer for seeking the relief that the said Judgment and Decree are null and void cannot be allowed.

6.The learned counsel for the respondents 1 to 3 would submit that the defendants/petitioners herein have filed the suit in O.S. No.199 of 2003 before the Court below seeking for the relief of partition and separate possession. Since the plaintiffs/respondents herein have left some of the properties, they have filed the suit in O.S.No.152 of 2003 before the same Court below and the same was transferred and renumbered as O.S. No.444 of 2004. While both suits were being tried jointly, the defendants/petitioners herein have filed their additional written statement stating that one of the items of the suit property ie. S.No.255/11, to the extent of 0.22 cents was gifted to the 4th defendant by the 3rd defendant



and later, since the 3rd defendant cancelled the said gift deed, the other defendants filed a suit in O.S. No.122 of 2000 before this Court for declaration and the same was decreed in their favour and since the said property is also joint family property, the 3rd defendant has no right to execute the said gift deed and hence the decree obtained on the basis of the said gift deed is to be declared as null and void and hence the plaintiffs/respondents herein have filed the aforesaid application seeking for to amend the plaint pleadings. After perusing the entire evidence, the Trial Court allowed the application by order dated 11.12.2020. Hence, there is no need to interfere with the aforesaid order and also the present Civil Revision Petition is unsustainable and liable to be dismissed.

7. Heard both sides and perused the materials available on record. Despite notice being served on the 4th respondent and his name was also printed in the cause list, there was no representation on his side.

8. On a perusal of the records, it is seen that while both the petitioners and respondents have filed the suit in O.S. 199 of 2003 and O.S. No.444 of 2004 before the Trial Court respectively seeking for the



relief of partition and separate possession, during the pendency of the suit, the plaintiffs/respondents herein came to know only after filing the additional written statement on 04.12.2019 by the defendants that in the suit schedule property in S. No. 255/11 to the extent of 0.22 cents have been decreed by Judgment and decree dated 19.09.2000 in favour of the defendants by the same Trial Court. It is admitted fact that it has not been whispered in the suit in O.S. No.199 of 2003 and written statement filed by the defendants/petitioners herein and further the plaintiffs/respondents herein came to know only after commencement of the Trial. Under such circumstances, it cannot be said that the application for the amendment in the plaint has been filed belatedly and it cannot be considered as barred by limitation. Further, without amending the pleadings, the plaintiffs cannot produce the necessary oral and documentary evidence accordingly.

9. There is no dispute that the suit property is joint Family Property. As the suit property in S.No.255/11 to the extent of 0.22 cents is one of the item in the suit schedule property and the same has been decreed in favour of the defendants/petitioners herein by the Trial Court in a different suit filed by the family members who are the petitioners herein, it has to be



decided during the trial of both suits which are pending before the Trial Court filed by the parties concerned whether the said deed to be declared as null and void or not. Hence, the order dated 11.12.2020 in I.A. No.1 of 2020 passed by the Trial Court does not warrant to interfere with. Hence, the Civil Revision Petition fails and is liable to be dismissed. The liberty has been given to the petitioners to file their respective counter before the Trial Court. The Trial Court is hereby directed to proceed with the Trial after making the necessary amendment in the plaint and dispose of the same as expeditiously as possible. The parties concerned are directed to co-operate with the Trial without seeking unnecessary adjournments.

10. In the result, the Civil Revision Petition stands dismissed and consequently, connected miscellaneous petition is closed if any. There shall be no order as to costs.

19.12.2022

Lbm

Index : Yes/No

Speaking Order : Yes/No



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V. BHAVANI SUBBAROYAN, J.,

Lbm

To:

1. The District Munsif Court, Attur.
2. The Section Officer, V.R.Section
High Court, Madras.

C.R.P. (PD) No. 454 of 2021
and
CMP.No.3956 of 2021

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