



C.R.P.(PD).No.1427 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2022

C O R A M

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No.1427 of 2020

and

C.M.P.No.8264 of 2020

1.Zeenath Unisa
2.Irshad Ahmed
3.Khizer Ahmed
4.Nissar Ahmed
5.Sheerin Tabassum
6.Fathima Jabeen

...Respondents 1 to 6/Defendants 1 to 6
Petitioners

-Vs-

1.Shabeer Ahamed
2.Shahnaz Begum Ameen
3.Parveen Hussain
4.Shahida Hussain

... Petitioners /Plaintiffs/
Respondents 1 to 4

5.Nasar Ahmed

...7th Respondent/7th Defendant/
5th Respondent



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Prayer: Petition filed under Article 227 of the Constitution of India against the Fair and Decretal order dated 30.01.2020 passed in I.A.No.153 of 2019 in O.S.No.35 of 2018 on the file of the learned III Additional District Judge, Kallakurichi.

For Petitioners : Mr.P. Valliappan

For Respondents : Mr.M.I.Javid Akbar
for R1 to R4

R5 – Notice deemed unnecessary vide
Court order dated 31.01.2022

ORDER

Aggrieved by the order passed by the learned III Additional District Judge, Kallakurichi, in allowing an amendment petition filed by the plaintiff, the defendants 1 to 6 are before this Court. The parties are referred to in the same rank and array as before the trial Court.



WEB COPY 2.The facts preceding the filing of the above Civil Revision
Petition are as follows:

The respondents 1 to 4 herein had filed O.S.No.35 of 2018 on the file of the learned III Additional District Judge, Kallakurichi, for a partition and separate possession of their 35/120th share in the suit properties and to appoint an Advocate Commissioner to divide the same by metes and bounds by passing a Final Decree.

3.It is the case of the plaintiffs that the properties belonged to one Dr.T.Amiruddin Ahmed. Amiruddin Ahmed had married the plaintiffs' mother Khamerbanu on 15.05.1950 at Karaikudi. Three daughters and two sons were born to the said Amiruddin Ahmed through Khamerbanu who are the plaintiffs and the 7th defendant. In the year 1974, Amiruddin Ahmed had married one Zeenath Unisa, the 1st defendant through whom the defendants 2 to 6 were born. The plaintiffs would submit that their mother was treated badly by their



father and the humiliation and cruelty had increased after his marriage to the 1st defendant. The plaintiffs' mother was forced to conduct the marriage of the plaintiffs 2 and 3 and therefore, she was forced to move to Chennai with her three children, the plaintiffs 1, 4 and the 7th defendant. It was the plaintiffs' mother who had educated the children and celebrated their marriage. On 16.09.2000, their father Amiruddin Ahmed passed away on account of cancer and parkinson's disease.

4.Amiruddin Ahmed was the absolute owner of the suit properties and at the time of his death, he had left behind his two wives and ten children, namely, the plaintiffs and the defendants 2 to 7. The 5th defendant with his mother was residing in Chennai. On 17.09.2000, their mother Khamerbanu passed away. After the death of Amiruddin Ahmed, there was an oral agreement with reference to the properties was entered into and the defendants 1 to 2 were permitted to occupy the house property till such time as none of the legal representatives had any objection to the same.



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5.The plaintiffs came to learn that the defendants were attempting to alienate the suit properties by manipulating and forging some false documents. Therefore, they had issued a Legal Notice dated 16.10.2017 demanding an immediate partition of the suit properties. A reply notice was sent on 30.10.2017 in which not only did the defendants deny the marriage between the plaintiffs' mother and Amiruddin Ahmed but had also questioned the paternity of the plaintiffs. Amiruddin Ahmed had executed Settlement Deeds in favour of the defendants 2 to 4 with reference to the suit properties. The plaintiffs would submit that their father Amiruddin Ahmed suffered from stomach cancer and parkinson's disease in the year 1992 and therefore, taking advantage of the ill health of Amiruddin Ahmed, these documents that have been got up in the year 2000 was a fabricated and forged one. Therefore, the plaintiffs had come forward with the suit.



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6.They had also taken a stand that since the plaintiffs were denying the truth and validity of the Deeds said to have executed in favour of the defendants 1 to 4 by Amiruddin Ahmed, the Deeds were not binding on them. The Plaint proceeds on footing that the transactions came to light only on receipt of the reply notice. Therefore, the plaintiffs had come forward with the suit in question.

7.A Written Statement was filed *inter alia* denying the right of the plaintiffs and setting up an independent title upon the defendants.

8.The plaintiffs thereafter came forward with the impugned application, namely, I.A.No.153 of 2019 seeking to amend the Plaint by seeking a declaration that various Settlement deeds are illegal, null and void and inoperative. In the affidavit filed in support of the said application, the plaintiffs would submit that earlier they had engaged the services of a Counsel who had prepared the pleadings. Originally,



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O.S.No.15 of 2018 was pending on the file of the learned Principal District Judge, Villupuram. It was later transferred to the learned III Additional District Judge, Kallakurichi, and re-numbered as O.S.No.35 of 2018. His counsel at Villupuram had advised him to engage another Counsel at Kallakurichi. When the present counsel had gone through the pleadings he pointed out that an amendment petition has to be filed for challenging the Settlement Deeds. Therefore, the present application is filed.

9.The defendants had resisted the above application *inter alia* contending that the petition is barred by limitation and that apart, all the Settlement Deeds have been given effect to and some of the properties were sold to the third parties who had put up constructions. The plaintiffs who had filed the suit without scrutinising the Encumbrance Certificate cannot seek the relief of declaration and further the relief is not maintainable and was time barred.



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10.The learned III Additional District Judge, Kallakurichi, by her order dated 30.01.2020 had allowed the application stating that the amendment was only a pre-trial amendment and the plea of limitation could be raised in the suit and the same can be decided by giving opportunity to both sides. Challenging the same, the petitioners are before this Court.

11.Mr.P.Valliappan, learned counsel appearing for the revision petitioner would only place his submissions on the ground of limitation. He would submit that under Article 59 of the Limitation Act, the cancellation of an instrument had been done within a period of three years. The documents had been executed as early as in the year 2000 and even on the date of the filing of the suit, the prayer for cancellation of the deeds was barred by limitation.



12.The learned counsel for the revision petitioners would rely on the Judgment of the Hon'ble Supreme Court in **Radhika Devi v. Bajrangi Singh and others [AIR 1996 Supreme Court 2358]**, wherein the Hon'ble Supreme Court has held that where the party acquires a right on account of limitation and the same is sought to be taken away by amendment of the pleading, such amendment should be refused.

13.The learned counsel for the revision petitioners would also rely on the Judgment of the Hon'ble Supreme Court reported in **Mashyak Grihnirman Sahakari Sanstha Maryadit v. Usman Habib Dhuka and others [AIR 2013 Supreme Court 3188]**, where the learned Judges has set aside the Judgment of the High Court by holding that the knowledge about the conveyance was as early as in the year 1989 and the plaintiff has sought to amend the Complaint filed in the year 2009 only in the year 2010. The learned Judges had therefore set aside the order amending the Complaint. The other Judgment on which



he would place his reliance is the Judgment reported in **L.C.**

Hanumanthappa v. H.B.Shivakumar [2015 (6) CTC 562 (SC)]. In that case, in the Written Statement filed in the year 1990, the defendant had denied the plaintiff's title. However, the amendment had been filed only in the year 2002 that too after the suit was remitted back. The Hon'ble Supreme Court in **Hanumanthappa's** case has held that the amendment cannot be allowed since a legal right had accrued to the defendant and the High Court had rightly rejected the plea.

14.He would therefore contend that the facts in the present case is also similar, since the Settlement Deeds had been executed in the year 2000, and the plaintiffs have themselves in the original Plaint contended that there was no necessity to seek for declaration to set aside the Settlement Deed as the same is not binding on them and thereafter, a year later, the application has been filed. He would therefore pray that the impugned order be set aside.



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15.Per contra, Mr.M.I.Javid Akbar, learned counsel appearing for the respondents 1 to 4 would submit that the knowledge about the documents was only when the reply notice of the defendants was received by the plaintiffs who had immediately taken steps to file the suit. At that juncture, they were advised that they need not seek to have the documents declared as invalid and null and void. It was only after the suit was transferred to the Court where it is now pending that they were advised to amend the Plaint and accordingly, they have come forward with this petition. The learned counsel for the petitioners has submitted that the petition is well within time and no prejudice is going to be caused to the plaintiffs.

16.Heard the learned counsel for the revision petitioners and the learned counsel for the respondents and perused the papers.



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17.A reading of the entire Plaint would *prima facie* indicate that the plaintiff had come to know about the execution of all those documents only when they received the reply notice dated 30.10.2017. The suit has been filed on 25.10.2018. In Para 18 of the Plaint, the plaintiffs have taken the following stand with reference to the Settlement Deeds:

“18....The plaintiffs specifically deny the due execution, truth and validity of the Settlement Deeds dated 15.05.1987, 24.05.2000, 29.05.2000 and 29.05.2000 alleged to have been executed by Dr.T.Amiruddin Ahmed in favour of the defendants 2 to 4 and the said Settlement Deeds are not binding upon the plaintiffs.”

18.In Para IV, where the cause of action has been set out the plaintiffs have stated that they had come to know about the Settlement



Deeds on receipt of the reply notice. In the affidavit filed in support of the amendment petition which has been filed on 03.09.2019, the plaintiffs have set out the reasons for coming forward with the amendment petition as follows:

“4.I submit that in such circumstances, the present counsel on scrutinizing the papers had observed that an amendment application has to be filed, as in plaint para 18 the settlement deeds and partition namely plaint document No.4 to 8 as shown below:

Sl.No.	Date	Description of document
i.	1176 of 1978 dated 15.05.1987	Settlement Deed executed by Dr.T.Amiruddin Ahmed in favour of minor defendants 2 to 4 represented by guardian father Dr.Amiruddin Ahmed
ii.	2320 of 2000 dated 24.05.2000	Settlement deed executed by Dr.T.Amiruddin Ahmed in favour of defendants 2 to 4.



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| iii. | 2321 of 2000
dated 29.05.2000 | Settlement deed executed by
Dr.T.Amiruddin Ahmed in favour of
defendants 2 to 4. |
| iv. | 2322 of 2000
dated 29.05.2000 | Settlement deed executed by
Dr.T.Amiruddin Ahmed in favour of
defendants 2 to 4. |
| v. | 5383 of 2014
dated 18.11.2014 | Partition deed entered between
the defendants 2 to 4. |

19. Therefore, from a reading of the Complaint, knowledge about the execution of the documents is said to be on the receipt of the legal notice dated 30.10.2017. The suit has been filed within a year there from. The amendment application has been filed within a period of eleven months from the date of the filing of the Complaint. In all the amendment petition has been filed approximately within a period of one year and eleven months from the date of reply notice. The Judgment relied upon by the counsel for the petitioners are all cases where the limitation has been calculated from the date of knowledge.



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20.Article 59 of the Limitation Act provides as follows:

“59.To cancel or set aside an instrument or decree or for the rescission of a contract. Three years. When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.”

21.Therefore, the learned Judge was correct in Law in allowing the amendment petition. It is well open to the revision petitioners/defendants to raise the plea of limitation in their additional written statement. In these circumstances, I do not find any infirmity in the order passed by the learned III Additional District Judge, Kallakurichi. Accordingly, this Civil Revision Petition is dismissed. It is open to the defendants to file their additional written statement



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raising all defences. The learned Judge shall dispose of the suit on or before 30.09.2022. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

10.02.2022

Internet : Yes/No
Index : Yes/No
Speaking / Non-Speaking
mps

To

The III Additional District Judge,
Kallakurichi.



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P.T. ASHA, J,

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