



CRP(PD)Nos.2056 & 2057 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP(PD)Nos.2056 & 2057 of 2021 and
CMP.No.15638 of 2021

1.K.Parameshwaran

2.P.Sumathi

3.P.Subash

4.Minor Sowmiya

... Petitioners

(Rep. by her Natural Guardian and Next Friend,
her Father K.Parameshwaran)

Vs

1.S.Duraisamy

2.Baby @ Rathinam

3.C.Kannagi

4.C.Shanmugam

5.Aruthra Finance

Rep. by its Managing Partner K.Sekar
D.No.119/E3, Salem Road,
Namakkal Town.
(R3 to R5 are given up)

... Respondents



CRP(PD)Nos.2056 & 2057 of 2021

Common Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the Fair and Final order in I.A.Nos.1 & 2 of 2021 in O.S.No.127 of 2016 on the file of District Munsif Court, Rasipuram dated 07.04.2021.

(In both CRPs)
For Petitioners :Ms.J.Prithivi

For Respondents :Mr.S.P.Yuvaraj

COMMON ORDER

These revisions are directed against the order allowing an amendment to the plaint by which the plaintiff sought to include a relief of declaration that the gift settlement deed dated 07.11.2001 created by the Muthayammal in favour of the first defendant as null and void and for reopening the evidence of the plaintiffs to enable the plaintiffs to let in evidence on the amended plaint.

2.The suit was originally filed by the plaintiffs seeking declaration of title, injunction restraining the 7th defendant from interfering with the plaintiffs peaceful possession and three unnecessary reliefs of declaration relating to two sale deeds and a gift settlement deed dated 12.12.2008,



17.02.2016 and 27.11.2012. After the examination of the plaintiffs, the plaintiffs came up with the applications seeking amendment to include another unnecessary and redundant relief of declaration that the settlement deed executed by Muthayammal the mother of the first defendant in favour of the first defendant on 07.11.2001 is null and void.

3.I term these reliefs as redundant or unnecessary because, the plaintiffs are not a party to any of the documents and they are entitled to ignore the documents. Once the plaintiffs seek a declaration of their title, a document that is executed by the defendants or persons, who according to the plaintiffs do not have title to the property can be ignored by the plaintiffs. It is not necessary for the plaintiffs either seek to set aside the same, by paying Court Fee under Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act or seek a declaration that the document is not true and valid or that the document is null and void.

4.It is fundamental principle of law that if a person is not a party to the instrument he can ignore the instrument and seek to establish his title. Cancellation or setting aside the instrument is required only where the plaintiffs cannot seek a declaration of their title or cannot establish their title



without having the documents set aside. However, the suit has been entertained and the learned trial Judge has allowed the applications for amendment also on the ground that the factum of existence of the so called settlement deed dated 07.11.2001 came to the knowledge of the plaintiffs only at the time of examination of the plaintiffs.

5.As I have already pointed out that there is a dispute regarding identity of Muthayammal executant of the settlement deed dated 07.11.2001. Whether the said Muthayammal is the mother of the first defendant or not, whether she is wife of Kandasamy or not are questions which will have to be decided during the trial. The plaintiffs will have to necessarily establish their title to succeed in the suit. Even in the absence of the prayer which is now sought to be introduced to the plaint namely, a declaration that the gift settlement deed dated 07.11.2001 executed by the first defendant's mother Muthayammal in favour of the first defendant is null and void, the plaintiffs can establish their title and succeed the suit. I therefore do not see any reason for sustaining the order of the trial Court allowing the amendment and consequently reopening the suit. Hence, both the Civil Revision Petitions are allowed. The order of the trial Court is set



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aside. The applications in I.A.Nos.1 and 2 of 2021 will stand dismissed. It is made clear that it would be open to the plaintiffs to establish their title dehors the settlement deed dated 07.11.2001. No costs. Consequently, connected miscellaneous petition is closed.

01.02.2022

vs

Index: No

Speaking order

To:

1.The District Munsif Court, Rasipuram.

2.The Section Officer,
VR Section,
Madras High Court, Chennai.



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R.SUBRAMANIAN, J.

VS

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