



C.R.P. (PD) No.1770 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.02.2022

Delivered on : 14.03.2022

CORAM :

**THE HONOURABLE MRS. JUSTICE S. KANNAMMAL**

**C.R.P. (PD) No.1770 of 2017**

**and**

**C.M.P.No.8320 of 2017**

G.Margabandhu

... Revision Petitioner

Vs.

R.Kasinathan

... Respondent

**Prayer :** Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order, dated 08.03.2017 in I.A.No.1434 of 2016 in O.S.No.73 of 2010 on the file of the Principal District Munsif at Vellore.

For Petitioner : Mr.M.Raja Sekhar

For Respondent : Mr.G.Justin



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## **ORDER**

This Civil Revision Petition has been filed against the order, dated 08.03.2017, in I.A.No.1434 of 2016 in O.S.No.73 of 2010, passed by the Principal District Munsif at Vellore, allowing the application for amendment of plaint.

2.For the sake of convenience, the revision petitioner shall hereinafter be referred to as “defendant” and the respondent shall be referred to as “plaintiff”.

3.The case of the plaintiff is as follows :

- The plaintiff purchased the suit property from one D.Senthil Kumar, vide registered sale deed dated 13.03.2009. The said D.Senthil Kumar inherited the suit property from his father C.Duraisamy Gounder through a registered Will dated 28.11.2006.
- The plaintiff claims that he is in possession and enjoyment of the property since the date of purchase.
- The defendant, who is owner of the property adjacent to the suit



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property, is trying to interfere with the peaceful possession of the plaintiff in the suit property.

- Hence, the plaintiff filed the suit for permanent injunction against the defendant.

4.The case of the defendant is as follows :

- The defendant filed his written statement and took a stand that the defendant is in possession and enjoyment of the suit property since 15.12.1981, after he purchased the suit property from one Shanmugam, vide registered sale deed dated 15.12.1981.
- The defendant disputed the sale deed executed in favour of the plaintiff and also the Will executed in favour of the vendor of the plaintiff, D.Senthil Kumar.

5.The trial commenced and the plaintiff examined himself in-chief on 04.06.2014.

6.Thereafter, the defendant filed an additional written statement, dated 19.08.2014, and added to his defence as follows :



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- The defendant purchased the suit property from one Shanmugam vide registered sale deed dated 15.12.1981.
- However, on apprehension of litigation from his vendors, the defendant and his co-brother C.Duraisamy Gounder, father of D.Senthil Kumar (vendor of plaintiff), entered into a mutual understanding, by which, the defendant sold the suit property to the said C.Duraisamy Gounder, vide registered sale deed dated 22.01.1987, and the said C.Duraisamy Gounder agreed to reconvey the suit property to the defendant within a period of 25 years and agreed that the defendant shall continue to be in possession of the suit property and also executed a reconveyance agreement to that effect on 23.01.1987.
- After the demise of C.Duraisamy Gounder, the defendant insisted the son of C.Duraisamy Gounder, D.Senthil Kumar to execute the sale deed as per the reconveyance agreement dated 23.01.1987.
- Since there was no positive response from D.Senthil Kumar, after exchange of legal notices, the defendant filed a suit against the legal heirs of Late C.Duraisamy Gounder, in O.S.No.55 of 2009 for specific performance of the reconveyance agreement executed by



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Late C.Duraisamy Gounder.

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- The said suit in O.S.No.55 of 2009 was decreed on 25.02.2010 and the defendant got the sale deed executed in his favour on 22.11.2011 pursuant to the orders in E.P.No.166 of 2010 in O.S.No.55 of 2009.
- Meanwhile, the defendant caused a legal notice, dated 31.03.2009, to the plaintiff, who is the subsequent purchaser from D.Senthil Kumar, setting out the details of the reconveyance agreement dated 23.01.1987 and warning the plaintiff not to create any document in respect of the suit property and also desisting him from disturbing the defendant's possession of the property. The said notice was received by the plaintiff on 05.04.2009.

7.After the plaintiff's side evidence was closed on 18.10.2016, the defendant (D.W.1) filed his proof affidavit on 20.10.2016, setting out all the details with regard to the reconveyance agreement, the suit for specific performance in O.S.No.55 of 2009, the decree passed therein and the subsequent sale deed executed in his favour pursuant to the execution proceedings in O.S.No.55 of 2009.



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8. Thereafter, the plaintiff filed the impugned application, dated 15.12.2016, for amendment of plaint under Order VI Rule 17 of CPC to add the following relief and also to add certain facts associated thereto :

*“to declare the order passed in E.P.No.166 of 2010 in O.S.No.55 of 2009 due to the effect of decree and judgment passed in O.S.No.55 of 2009 and to that effect the alleged Sale Deed dated 22.02.2011, Document No.862 of 2011 as null and void.”*

9. The impugned application was allowed by the trial Court, by order dated 08.03.2017.

10. Challenging the said order dated 08.03.2017, the defendant has filed the present Civil Revision Petition.

11. The learned counsel for the revision petitioner/defendant submitted that the impugned application for amendment has been filed after commencement of trial. The main contention of the learned counsel is that the defendant caused a lawyer's notice, dated 31.03.2009, to the plaintiff



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setting out the relevant facts about the suit for specific performance in O.S.No.55 of 2009 and the notice was received by the plaintiff on 05.04.2009; therefore, the plaintiff was very well aware of the said suit in O.S.No.55 of 2009 even before filing of the present suit, and therefore, the impugned application now filed in December, 2016, to amend the plaint for declaration of the Sale Deed dated 22.02.2011 executed pursuant to the decree in O.S.No.55 of 2009, after expiry of three years, is absolutely barred by limitation. Therefore, the learned counsel submitted that the trial Court was not justified in allowing the impugned application and prayed for setting aside the impugned order.

12.Per contra, the learned counsel appearing for the respondent/plaintiff submitted that, after examination of plaintiff's side witnesses, only when the defendant (D.W.1) filed his proof affidavit on 20.10.2016, the plaintiff came to know about the decree passed in O.S.No.55 of 2009 and also the subsequent Sale Deed, dated 22.02.2011, executed pursuant to the order passed in E.P.No.166 of 2009 in O.S.No.55 of 2009. Therefore, the learned counsel submitted that the period of limitation has to be reckoned from the date of knowledge, i.e. from



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20.10.2016, and the impugned application is dated 15.12.2016, which is well within the period of limitation. The learned counsel further submitted that the trial Court has rightly allowed the impugned application and hence, prayed for dismissal of the present Civil Revision Petition.

13.This Court gave its anxious consideration to the rival submissions and also perused the entire materials available on record.

14.The suit is for permanent injunction. The trial commenced and plaintiff's side evidence was closed. The defendant (D.W.1) filed his proof affidavit on 20.10.2016. Thereafter, the impugned application for amendment, dated 15.12.2016, was filed by the plaintiff. Since it is a post-trial amendment which is sought for, as per the provisions of Order VI Rule 17 of CPC, it is to be seen as to whether the plaintiff, in spite of due diligence, could not have raised the matter before commencement of the trial.

15.In the impugned order, the trial Court has found based on evidence that the defendant has informed the plaintiff that he has filed a suit



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in O.S.No.55 of 2009, vide notice (Ex.C1) dated 31.03.2009, and the said notice has been received by the plaintiff on 05.04.2009 vide Postal Acknowledgement Card (Ex.C2). The plaintiff claims that he came to know about the subsequent developments in the said suit, viz., decree passed in the suit dated 25.02.2010 and the execution of Sale Deed dated 22.02.2011 pursuant to the decree, only when the defendant (D.W.1) filed his proof affidavit on 20.10.2016. However, the trial Court has observed that the petition in I.A.No.929 of 2014 to file the additional written statement, setting out all details in respect of O.S.No.55 of 2009 upto the execution of sale deed dated 22.02.2011, was filed by the defendant on 19.08.2014 and the notice of hearing in the said petition was received by the plaintiff on 26.08.2014 and the plaintiff filed his counter in that petition on 03.09.2014, specifically stating that the suit in O.S.No.55 of 2009 is not related to the present suit, and the said petition was allowed on 07.11.2014.

16. Admittedly, the plaintiff is not a party to O.S.No.55 of 2009 and it is observed in the impugned order that the suit was decreed *ex parte* only on 25.02.2010, i.e., after filing of the present suit in the year 2009. It is clear from a perusal of the impugned order that the plaintiff has been put on



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knowledge about the decree in O.S.No.55 of 2009, order passed in E.P.No.166 of 2010 in O.S.No.55 of 2009, and the execution of sale deed dated 22.02.2011 pursuant to the execution proceedings, only on 26.08.2014, i.e., in the month of August, 2014, when he received notice of hearing in the petition to file additional written statement filed by the defendant. However, the plaintiff was examined-in-chief as early as on 04.06.2014. Therefore, the plaintiff cannot be found fault with for not raising the proposed amendment either at the time of filing of the present suit or before the commencement of trial, nor the proposed amendment is barred by limitation.

17. Therefore, this Court finds no illegality, infirmity or perversity in the order of the trial Court allowing the impugned application for amendment. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

**14.03.2022**

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Internet : Yes  
Index : Yes / No  
Speaking order / Nonspeaking order

To

The Principal District Munsif,  
Vellore.



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**S. KANNAMMAL, J.**

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