



WEB COPY



CRP(PD)No.2702 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.12.2021

PRONOUNCED ON : 07.03.2022

CORAM:

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

C.R.P.(PD).No.2702 of 2017

and

C.M.P.No.12878 of 2017

Vijayalakshmi

... Petitioner

Vs.

1.Narayanaswamy

2.Nagesh

... Respondents

Prayer:- This Civil Revision Petition filed under 227 of the Constitution of India, to set aside the fair and decreetal order, made in I.A.No.97 of 2017 in O.S.No.388 of 2006, dated 17.06.2017, on the file of the District Munsif Court, Hosur, Krishnagiri District.

For Petitioner : Mr.R.Jayaprakash

For R1 : Mr.Hariharan
For Mr.V.Nicholas

For R2 : No appearance



CRP(PD)No.2702 of 2017

ORDER

WEB COPY The Civil Revision Petition has been filed, against the fair and decreetal order, dated 17.06.2017, passed in I.A.No.97 of 2017 in O.S.No.388 of 2006, dated 29.08.2016, by the District Munsif Court, Hosur, Krishnagiri District.

2. The facts of the case, in a nutshell, are that the 1st respondent herein is the Plaintiff and the 2nd Respondent and petitioner herein are the Defendants in the suit in O.S.No.388 of 2006. The above suit was filed by the 1st respondent herein seeking preliminary decree for partition against the defendants therein, to direct the division of the suit properties into two equal shares by metes and bounds and for allotment of one share to the 1st respondent/plaintiff and to direct delivery of the same, failing which the plaintiff shall be given liberty to apply for passing final decree to divide the suit properties by appointment of a Court Commissioner as per the preliminary decree and for costs.

3. Pending suit, the 1st respondent herein has filed the application in I.A.No.97 of 2017, seeking permission to amend the plaint, particularly the averments in the prayer column, Court fees valuation Column etc., Since the



CRP(PD)No.2702 of 2017

said application was allowed, by the impugned order, dated 17.06.2017, the Civil Revision Petition has been filed by the 2nd respondent therein.

4. This Court heard the learned counsel for the petitioner and the respondents and also carefully perused the materials placed on record.

5. The plaintiff/1st respondent herein filed the original suit in O.S.No.388 of 2006 for partition of suit properties into two equal shares and for allotment of share to the plaintiff and for passing of final decree thereon. After filing of written statement and additional written statement by the first defendant/petitioner herein, the plaintiff/1st respondent herein filed I.A.No.97 of 2017 for amendment of plaint to amend the prayer column for declaring the Sale Deed dated 06.05.1999, executed by the 1st defendant/petitioner in favour of the 2nd defendant as null and void and also for amendment in the Court fees valuation Column No.7.

6. The learned counsel for the petitioner/first defendant would submit that the Sale Deed was executed by the 1st defendant in favour of the 2nd defendant in the year 1999 itself and the respondents herein very well aware about the above Sale Deed dated 06.05.1999, but keeping silence for the past 18 years



without raising any objection about the alienation, he filed the present application for amendment. Such an application ought to have been filed for setting aside the Sale Deed within a period of 3 years and therefore the amendment now sought for is barred by Section 58 and Section 59 of the Limitation Act and the same has been pleaded in the written statement.

7. Per Contra, the learned counsel appearing for the first respondent/ plaintiff would contend that the Sale Deed executed by the 1st defendants in favour of the second defendant was already pleaded in Para No.7 of the plaint and the amendment is only for consequential relief. The Trial Court also having considered the arguments put forth by the counsel for the parties, rightly allowed the petition and no interference is called for by this Court.

8. The plaintiff has filed the suit for partition of the suit properties. The 1st defendant in the suit is the plaintiff's brother. According to the plaintiff, the suit property was the absolute property of his father. After the death of his father there was no partition took place between him and his brother/1st defendant in the suit. Therefore, he has filed the suit for partition. Even in the suit, the 2nd defendant was also impleaded as a party, who is the subsequent purchaser of a portion of the suit properties from the 1st defendant.



9. According to the plaintiff/first respondent herein, the 1st defendant/revision petitioner ought not to have executed the Sale Deed in favour of the 2nd defendant when he has no conveyable title to execute such a Sale Deed in favour of the 2nd defendant. It is also stated that in Para No.7 of the plaint, the plaintiff has stated that the 1st defendant has executed the Sale Deed in favour of the 2nd defendant and it will not bind him or it will not preclude him from filing the present application for amendment.

10. It is seen from the records that the suit was filed in the year 2006. The suit is not ripe for trial. The parties are yet to step in to the witness box. At this stage, in the year 2017, the present application has been filed under Order VI Rule 17 CPC to include the prayer for setting aside the Sale Deed executed by the 1st defendant in favour of the 2nd defendant. Of course, it is true, that the fact that the 1st defendant had executed the Sale Deed in favour of the 2nd defendant on 06.05.1999 is prominently pleaded in para No.7 of the plaint. This Court is of the opinion that having said so in Para No.7 of the plaint, the plaintiff ought to have filed the suit not only for the relief of partition but also for a declaratory relief to declare the Sale Deed dated 06.05.1999 as null and void. However, such prayer has not been sought for by the plaintiff.



11. Admittedly, the suit was pending for about 11 years since 2006.

During the year 2017, the plaintiff has filed the instant application for amendment. It is also true that the 1st defendant had sold a portion of the suit properties in favour of the 2nd defendant on 06.05.1999 and it is explicitly stated in Para No.7 of the plaint. But for the reason best known, the 1st first respondent/plaintiff did not seek for a declaratory relief. Now, the plaintiff/first respondent herrein had woken up from deep slumber and filed the present application for amendment.

12. The Trial court allowed the application mainly on the ground that the suit is not ripe for trial. Therefore, before commencement of trial if the amendment is allowed no prejudice would be caused to the defendants in the suit. Such a conclusion arrived at by the Trial Court merits acceptance. When the trial, in the suit has not commenced there is no bar for the plaintiff to file the instant application under Order VI Rule 17 of CPC for amendment. At the same time, such an application for amendment ought to have been filed within a reasonable period. It is also to be stated that even if the suit is decreed in favour of the plaintiff, it will not enure to his benefit without seeking a consequential relief for declaration to declare the Sale Deed dated 06.05.1999

<https://www.mhc.tri.gov.in/judis> in favour of the 2nd defendant. In other words, even if the suit is decreed, the



plaintiff/first respondent cannot enjoy the fruits of the decree inasmuch as the sale deed executed by the first defendant in the suit in favour of the second defendant will be an embargo for him to get the decree executed in a manner known to law. In such view of the matter, the amendment sought for by the plaintiff/first respondent has to be allowed, keeping in view the larger interest of justice.

13. Having regard to the above, this Court is of the view that the Court below is wholly justified in allowing the application for amendment. At the same time this Court is of the view that there was enormous delay on the part of the plaintiff/first respondent herein in seeking the present relief, which he could have sought for even at the time of filing the suit. This delay looms large in the case of the plaintiff and it would have definitely caused prejudice to the contesting 1st defendant. In such view of the matter, while confirming the order passed by the Trial Court, this Court is inclined to impose a cost of Rs.5,000/- payable by the plaintiff/first respondent herein to the revision petitioner/1st defendant in the suit. In fact, the Court below itself could have awarded cost while entertaining the application under Order VI Rule 17 CPC filed by the plaintiff belatedly, but it did not do so. Therefore this Court is of the view that imposing a cost of Rs.5,000/- payable by the plaintiff/first



CRP(PD)No.2702 of 2017

respondent herein to the revision petitioner/first defendant would be justifiable given the facts and circumstances of the case.

14. In the result, the Civil Revision Petition is dismissed by confirming the fair and decreetal order, made in I.A.No.97 of 2017 in O.S.No.388 of 2006, dated 17.06.2017, on the file of the District Munsif Court, Hosur, Krishnagiri District, however, with costs of Rs.5,000/- payable by the first respondent/plaintiff to the revision petitioner/defendant within a period of two weeks from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

07.03.2022

ssi

Index:Yes/No

Speaking Order : Yes / No

To

1. The District Munsif Judge,
Hosur,
Krishnagiri District.
2. The Section Officer,
V.R. Section,
High Court of Madras.



WEB COPY



CRP(PD)No.2702 of 2017

S.KANNAMMAL, J.

ssi

Pre-Delivery Order made in
C.R.P.(PD)No.2702 of 2017

07.03.2022