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C.R.P. No. 3748 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 3748 of 2017
and
C.M.P. No. 17436 of 2017

1. P.Geetha Marman,
W/o. Pranava Marman
2. B.Uma Devi,
W/o. Balasubramaniam
3. S.Vijaya Rani,
W/o. C. Santhana Krishnan
4. S. Savithri,
W/o. A.R.Palanisamy
5. S. Nalini,
W/o. P.S.Ravishankar

... Petitioners

Versus

1. Saraswathi,
W/o. Late Kuppusamy Gounder
2. Dhanalakshmi,
W/o. Somasundaram



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3. Vasantha,
W/o. Late Thirunavukkarasu

4. Ramanathan,
S/o. Late Kuppusamy gounder

5. Vishvanathan,
S/o. Kuppusamy gounder

6. The Tahsildar,
Avinashi Taluk,
Erode Dt.

7. The Authorised Officer and
Special District Revenue Officer,
National Highway 47,
3, Savarimuthu Chetty Street,
Red Fields, Coimbatore-45.

8. The District Collector,
Tiruppur District,
Tiruppur.

... Respondents

PRAYER : Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the fair and decreetal order dated 20.06.2017 made in I.A.No. 627 of 2017 in O.S.No. 371 of 2010 on the file of learned District Munsif Court, Avinashi.



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For Petitioners : Mr.N.Manokaran
For Respondents : Mr. Anil Relwani for R1 to R5
Mr. B. Tamilnidhi,
Addl. Govt. Pleader for R6 to R8

ORDER

The Revision Petitioners are the plaintiffs in the suit in O.S.No. 371 of 2010 on the file of District Munsif, Avinashi, which was filed for the relief of permanent injunction and other consequential relief against the defendants.

2. During the pendency of suit proceedings, the plaintiffs filed an application in I.A.No. 627 of 2017 under Order 6 Rule 17 of C.P.C. to amend the pleadings, more particularly, with regard to the alleged sale deed dated 23.03.1964 purported to have been executed by father of plaintiffs in favour of one Ramya Textiles. To that effect, they wanted to amend the prayer as well as the payment of court fee. However, the defendants remained exparte. But, the trial judge, on perusal of records, came to the



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conclusion that with regard to Survey No.118 to an extent of 3.09 acres, which is the disputed property herein, for that, the plaintiffs claimed relief of declaration. But, the defendants filed a cross-suit claiming that father of plaintiffs executed a sale deed dated 23.03.1964, thereby denied the plaintiffs right over the property. Therefore, if the amendment is permitted, the cause of action for the suit would change and hence, the alleged amendment application cannot be permitted. Accordingly, the trial court dismissed the said application. Challenging the said findings, the plaintiffs preferred this Civil Revision Petition.

3. The learned counsel appearing for Revision Petitioners submitted that the trial court failed to take note of the fact that already the same relief was claimed by the defendants in the cross-suit. So, the amendment in the pleadings as well as in the prayer is necessary to incorporate the same for the relief of declaration to declare the sale deed as null and void, thereby no prejudice would be caused to any of the parties. Hence, he prayed to set aside the order passed by the trial court and permit them to amend the plaint.



4. The learned counsel for respondents 1 to 5 submitted that evidence of both parties are over and even with regard to the disputed sale deed also, the evidence was recorded. So, if the amendment is permitted, it will cause much hardship to the defendants.

5. Heard and considered rival submissions of learned counsel for revision petitioners as well as respondents and perused the records.

6. On considering the submissions of both sides as well as on perusal of records, the suit is filed in the year of 2010 for the relief of permanent injunction in respect of Survey No.118 to the entire extent of 12.40 acres of suit property and claiming that the plaintiffs are owners of the property. In that suit, the contesting defendants filed a cross-suit stating that the property in Survey No.118, an extent of 3.09 acres was already sold by father of plaintiffs in the year 1964, thereby they claimed that the plaintiffs have no right to that extent of property. While being so, the plaintiffs filed an application to amend the prayer, since the other sale deed relied on by the defendants would not bind on them. So, to amend the plaint, the plaintiffs



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filed an application to amend the pleadings as well as prayer for the relief of declaration. On hearing submissions of both sides, the trial court dismissed the application stating that nearly about six years later, during the commencement of trial, the said application was filed. The suit was filed claiming the relief of permanent injunction, more particularly, with regard to Survey No.118, to an extent of 12.40 acres. Now, the defendants filed a cross suit claiming that 3.09 acres belongs to them by way of purchase from the father of plaintiff. So, the sale deed dated 23.03.1964 is denied by the plaintiffs, but they contented that possession was acquired by the National Highways Authority. On seeing the facts, the relief claimed in the cross-suit, the defendants wanted to declare the extent of 3.09 acres based upon the sale deed dated 23.03.1964, which was denied by the plaintiffs. So, the persons, who approached this court to adjudicate the issue between same parties including the alleged sale deed, the declaration prayer sought by the plaintiffs would not cause any hardship to the defendants, because already the property in Survey No.118, the entire extent of 12.40 acres was subject matter of the suit property, in which defendants claiming portion of the property as a owner. So, the title of the property is to be decided, for that,



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necessary amendment is to be permitted. Accordingly, this Civil Revision Petition is allowed and the order passed by the trial court in I.A.No. 627 of 2017 is set aside.

7. Furthermore, the evidences are over, anyhow, the defendants are entitled to file their additional written statement within a period of two weeks from the date of receipt of copy of this order. After that, the trial court is directed to amend the plaint and necessarily frame additional issues and to receive the additional written statement of defendants. Liberty is granted to the plaintiffs to file their reply statement to the additional written statement, if any. Since the suit is pending from the year of 2010, the Trial Court is directed to proceed with the trial and dispose the case within a period of three months thereafter. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To
District Munsif, Avinashi.

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T.V.THAMILSELVI, J.

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