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CRP.No. 4682 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2022

CORAM:

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

CRP.No. 4682 of 2017

and

C.M.P.No. 22044 of 2017

1.Kanikaimary @ Pappakannu

2.Mary (Died)

3.Josephine

...Petitioners

Versus

1.Mariadoss

2.Peter

3.Gracy

4.Rajan

5.Pushpa

6.R.Joan

7.V.Arokianathan

8.D.Glory Jennifer

9.V.Bendict Sagayaraj

10.Sweatha

[Respondents 6 to 10 brought on record
as LR's of the deceased 2nd petitioner,
namely, Mary vide order dated 14.12.2021
made in CMP.Nos.18203, 18205 and
18206 of 2021 in the above CRP]

...Respondents

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order, dated 22.09.2017 passed in I.A.No.4621 of 2017 in O.S.No.6043 of 2009 on the file of II



For Petitioners : Mr.M.L.Ramesh
For RR 1 to 3 : Mr.S. Subbiah
For Mr.M. Abdul Majeed
For RR 4 & 5 : No such person

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order dated 22.09.2017 passed in I.A.No.4621 of 2017 in O.S.No.6043 of 2009 on the file of II Assistant Judge, City Civil Court, Chennai.

2.The revision petitioners herein are the plaintiffs and the respondents 1 to 5 herein/defendants 1 to 5 in the suit proceedings and the respondents 6 to 10 herein, were brought on record as LR's of the deceased 2nd petitioner, namely, Mary, by order dated 14.12.2021 made in CMP.Nos.18203, 18205 and 18206 of 2021 in the above revision.



3.The learned counsel appearing for the revision petitioners/plaintiffs contended that the father of the plaintiffs was executed some sham and nominal documents in favour of his employees during his life time, but the same were not aware about the creation of sham and nominal documents of title executed by him. However, the proposed parties are necessary parties to the suit proceedings. Hence, the petitioners/plaintiffs have not made any contents in the plaint about the documents. Therefore, it is necessary to plead the important and necessary contentions by amending the plaint. Therefore, the trial Court had erroneously dismissed the said application and hence, he prays to set aside the findings of the trial Court.

4. Per contra, the learned counsel appearing for the 1st respondent/1st defendant contended that the suit was of the year 2009. After nearly about 30 years, the said application was filed and the sale deeds executed by the father of the plaintiffs as null and void. It is totally barred by limitation and the trial Court has rightly appreciated the facts and therefore, this civil revision petition is not sustainable and this revision is liable to be dismissed.



5. Heard both sides and perused the materials available on record.

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6. On a perusal of the records, it is seen that the revision petitioners/plaintiffs have filed the suit in O.S.No.6043 of 2009 on the file of II Assistant City Civil Court, Chennai, for partition in respect of the three items of the suit properties. During the pendency of the suit proceedings, the petitioners/plaintiffs filed I.A.No.4004 of 2014 under Order 1 Rule 10 of CPC., to implead the proposed parties as defendants 4 and 5 in the suit proceedings. After perusing the records, the trial Court dismissed the said application on the ground that the said application was not filed in time after filing written statement. Feeling aggrieved by the petitioners/plaintiffs has preferred this CRP.No.219 of 2016 before this Court and the same was allowed by order dated 02.11.2016.

7. While pending the suit proceedings, the petitioners/plaintiffs filed I.A.No.4621 of 2017 under Order VI Rule 17 of CPC., seeking to amend the plaint. After analyzing the records, the trial Court dismissed the application by order dated 22.09.2017 by the learned II Assistant Judge, City Civil Court, Chennai.



8. It is also seen that the suit was contested by filing written statement by the 1st defendant and the same has been adopted by the defendants 2 and 3. The father of the petitioners/plaintiffs had executed some sham and nominal documents in respect of three items of the suit properties to third parties during his life time. However, the petitioners/plaintiffs have failed to indicate about the documents in the plaint. In the suit proceedings, issues have been framed and trial has also commenced. Evidence was closed on the side of the plaintiffs and the suit was posted for DW1 cross-examination. At this juncture, the petitioners/plaintiffs filed the said application seeking to amend the plaint with regard to the alleged sale deeds said to be executed by the father of the petitioners/plaintiffs in the year 1985 as null and void. The said application was strongly objected to by the defendants stating that the said application was barred by limitation so as to the sale deeds were executed in the year 1985, nearly about 30 years and therefore, the petitioners/plaintiffs have approached this Court to declare the documents as null and void as the barred by limitation.



9. The contention of the respondents/defendants is that the petitioners/plaintiffs have not taken any steps to amend the plaint after filing of the written statement by the defendants 1 to 3. Only during the examination of DW1, the said application has been filed by the petitioners/plaintiffs.

10. On a further perusal of the records, it reveals that the suit had been filed by the revision petitioners/plaintiffs against the respondents 1 to 3 for partition. When PW1 was examined, it came to the knowledge that even during the lifetime of the father deceased Selvam, the respondents 1 to 3 created a sham and nominal sale deeds through their father in benami in favour of the respondents 4 & 5. The trial Court has failed to take note of the fact that the petitioners/plaintiffs are categorically pleaded that in spite of their due diligence, they were not in a position to amend the paint prior to the commencement of trial and also to see that the character of the suit is not changed since the relief of declaration is sought only against the respondents 4 and 5. Admittedly, the plaintiffs have not cross-examined till date. Further, on considering the relief claiming in the suit for partition and hence, it is necessary parties to the suit proceedings and the proper pleadings in the suit to be



impleaded or otherwise, their right with regard to subject property will be affected as per the contention of the petitioners/plaintiffs. The alleged sale deeds executed by the father of the plaintiffs as null and void. The same was strongly objected to by the learned counsel for the respondents 1 to 3 before the trial Court, the vendors of the purchasers of the suit, the defendants having been remained set ex-parte.

11. The contention of the petitioners/plaintiffs is that at the instigation of their brothers, their father had executed the said sale deeds and sold it in favour of his employees. Therefore, with regard to the execution of the sale deeds, it is necessary that the petitioners/plaintiffs have to adduce evidence before the trial Court, or otherwise, their right will be affected. Therefore, in the interest of justice, one more opportunity must be given to the petitioners/plaintiffs who have approached the civil Court for partition.

12. However, considering the submissions made by the learned counsel for the respondents/defendants, liberty is given to the respondents/defendants to file additional written statement if any, by raising the plea of limitation as it is a settled proposition of law and mixed



question of facts. Hence, the petitioners/plaintiffs are entitled to adduce evidence in respect of the alleged sale deeds executed by the father of the petitioners/plaintiffs. Therefore, this Court is inclined to set aside the findings of the trial Court, and the same is liable to be allowed.

13. Accordingly, the Civil Revision Petition is allowed. The order dated 22.09.2017 passed in I.A.No.4621 of 2017 in O.S.No.6043 of 2009 on the file of II Assistant Judge, City Civil Court, Chennai. is set aside. The trial Court is directed to dispose of the suit within a period of 8 months from the date of receipt of a copy of this order after affording an opportunity to both parties.

08.11.2022

msm

Speaking Order : Yes/No

To

1. The II Assistant Judge, City Civil Court, Chennai.
2. The Section Officer, V.R. Section
High Court, Madras.



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T.V.THAMILSELVI, J.

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