



CRP (MD) No. 942 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 11.11.2022

CORAM:

THE HONOURABLE MR. JUSTICE **B. PUGALENDHI**

CRP (MD) No. 942 of 2022
and
CMP (MD) No. 3734 of 2022

A.S.A.R. Rajendran

... Petitioner

Vs

1.S.Hepsiba Kasthuri Bai

2.A.S.A.R. Balachandran

3.J. Joy Sarojini

4.T. Soundaravalli

5.M. Prakasi

6.J. Mangalavalli

7.A. Kamala

8.A. Sam Raja

9.A. Doris

10.A. Adlin

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow this revision by setting aside the orders passed in I.A.No.6 of 2021 in O.S.No.21 of 2015 on the file of the Additional District [Fast Track] Court at Tenkasi dated 20.11.2021



WEB COPY



CRP(MD)No.942 of 2022

For Petitioners : Mr.S.Ramesh alias Ramaiah
For Respondent : Mr.Meenakshi Sundaram
No.1 Senior Counsel,
for Mr.R.T.Arivu Kumar

ORDER

This Civil Revision Petition is filed as against the order passed by the trial Court allowing the application filed under Order VI Rule 17 of CPC to amend the plaint and the prayer.

2.The respondent / plaintiff has filed a suit in O.S.No.21 of 2015 as against the revision petitioner for the relief of partition in the year 2015. The respondent has filed an interlocutory application in I.A.No.6 of 2021 to amend the plaint, for the relief of declaration to declare the release deed dated 20.05.1991 registered in Document No.20 of 1991 before the Sub Registrar, Surandai as null and void.

3.The case of the plaintiff is that her father died during the month of May' 1991 and within 15 days, the



CRP (MD) No. 942 of 2022

defendants had obtained this release deed without even referring to the properties, partition deed and also without any reference to the valuation of the properties. The respondent / plaintiff was not aware of the contents of the release deed, however, she knew that release deed was obtained from her. She has also stated about the same in her plaint filed in the year 2015 and has also filed this application under Order VI Rules 17 and 18 of CPC to amend the plaint with a relief to declare the release deed dated 20.05.1991 as null and void. The said application was allowed by the trial Court by following the dictum laid down by this Court in **Muthusamy Vs Loganathan**, reported in **2021 (4) CTC 699**. Challenging the said order, the present civil revision petition is filed.

4.The case of the revision petitioner/ defendant is that the release deed sought to be declared as null and void is a registered document in the year 1991, the respondent / plaintiff is aware of the document and she has stated about the document in the plaint filed in the year 2015. The defendants have filed a written statement in



CRP(MD)No.942 of 2022

the year 2017 after four years from the filing of the written statement, this application for amendment was filed in the year 2021 and therefore, it is a time barred claim hit by Article 58 of the Limitation Act and therefore, the order passed by the trial Court allowing the interlocutory application is against the law and is liable to be set aside.

5.The learned Counsel for the respondent submits that this revision petitioner / defendant has filed his written statement only on 08.06.2021, raising this very same objection. The application for amendment is filed well within time and the respondent / plaintiff is having good case before the trial Court, since the release deed was obtained without any reference to the properties, value of the properties, it cannot be maintained in law.

6.Heard the learned Counsel on either side and perused the materials placed on record.

7.This application is filed for amendment under Order VI Rules 17 and 18 CPC can be considered at any stage of



CRP (MD) No. 942 of 2022

the suit proceedings and the Courts are expected to be liberal to avoid multiplicity of proceedings. The Rules of procedure are handmaid of justice and cannot defeat the substantive rights of the parties and it is well settled that amendment cannot be refused merely because of some mistake, negligence, inadvertence or even infraction of Rules or procedure.

8. In **Jai Jai Ram Manohar Lal Vs National Building Material** reported in **1969 AIR 1267** the Honb'ble Supreme Court has held that the power to grant amendment of pleading is intended to serve ends of justice and is not governed by any such narrow or technical limitations.

9. In **K.S. Alagarsamy Vs P. Natarajan**, reported in **1997 (1) CTC 292**, this Court has held that the Court may in appropriate cases allow the amendment even after the statutory period of limitation. The question of limitation should not have been decided by the Court below at present, since it is a question to be decided on merits with oral and documentary evidence. At present we are concerned with



CRP (MD) No. 942 of 2022

the amendment application which is governed only by Order VI, Rule 17 of CPC. In this case, as already said, the amendment application should have been allowed since it is not going to change the nature of suit, nor does it affect the rights of the defendant. The defendant is entitled to put forward all his contention even if the amendment is allowed.

10. The question of limitation is settled in **South Konkan distilleries and another Vs Prabhakar Gajanan Naik and others** reported in **2008 (14) SCC 632** that it is a settled position of law that the Court must be extremely liberal in granting the prayer for amendment, if the Court is of the view that if such amendment is not allowed, a party who has prayed for such an amendment, shall suffer irreparable loss and injury.

11. The Hon'ble Supreme Court in **Life Insurance Corporation of India Vs Sanjeev Builders Private Limited and Ors**, has given certain guidelines for amendment, which are extracted as follows:



WEB COPY

"Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

The delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision."

12.The plaintiff claims that her father died during the month of May' 1991 and within 15 days, the defendants had obtained this release deed without even referring to the properties, partition deed and also without any reference to the valuation of the properties.

13.Applying the above ratio laid down by the Hon'ble Supreme Court and considering the facts and circumstances of the case, this Court is not inclined to interfere with the orders of the trial Court. The trial Court shall frame issue with regard to the limitation separately after providing opportunity to the defendants to



CRP(MD)No.942 of 2022

raise all his contentions and shall decide the issue on merits and proceed further in accordance with law.

13.In the result, the civil revision petition stands dismissed. No costs. Consequently connected miscellaneous petition also stands dismissed.

11.11.2022

dsk

To

The Additional District Judge,
Fast Track Court,
Tenkasi.



WEB COPY



CRP (MD) No. 942 of 2022

B. PUGALENDHI, J.

dsk

CRP (MD) No. 942 of 2022

11.11.2022