



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :12.01.2022

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P(MD)No.1389 of 2021 &
CMP(MD)No.7864/2021

Stella Poongodi

... Petitioner

P.Daniel is recognised as Power Agent of the petitioner vide order dated 24.08.2021 made in C.M.P.(MD).No.6618 of 2021 in C.R.P.(MD) SR.No.37798 of 2021.

Vs.

1.S.Mathiyarasan

2.B.Jeyagar

... Respondents

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records and set aside the Fair and Decreetal order dated 14.03.2020 in I.A.No.3 of 2019 in O.S.No.255 of 2013 on the file of the Sub-ordinate Court, Thoothukudi.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : No appearance

ORDER

The plaintiff whose application for amending the plaint has been dismissed is the revision petitioner before this Court.

2. The plaintiff had filed a suit in OS.No.255/2013 on the file of the Subordinate Court, Thoothukudi for a declaration that the plaintiff alone is entitled to the suit schedule property and for an injunction; and to declare the mortgage deed executed by the first defendant in favour of the second defendant as null and void and not binding on the plaintiff. The plaintiff had contended that the suit schedule property belongs to one Shankaralinga Nadar under a sale deed dated 23.09.1954. The property had been purchased in an auction sale pursuant to a decree in OS.No.286/1968. The property had been brought to sale in execution proceedings in EP.No.308/1969 and the sale was confirmed in favour of one Durairaj Nadar and Sale Certificate was issued on 01.08.1970. The order has not been set aside to date. The said Durairaj Nadar is the father-in-law of the



plaintiff. Durairaj Nadar died on 25.02.1982 and the property was inherited by the plaintiff's husband Prakash, who was in possession and enjoyment of the same. Patta by mistake has been issued in the joint names of the plaintiff's husband and the first defendant. It appears that the plaintiff's husband Prakash had made an application to the Revenue Divisional Officer, Kovilpatti to remove the name of the first defendant from the joint Patta and by order dated 04.05.2012, the joint Patta dated 06.02.2004 issued in the joint names has been rectified and the name of the first defendant was removed. The said Shankaralinga Nadar, who had lost in the above proceedings, in connivance with his brother Boologa Rajan and the first defendant / Mathiyarasan had fabricated a sale deed dated 18.09.1978. It also appears that the first defendant by concealing the old Patta had mortgaged the property to the second defendant on 03.07.2012 for a sum of Rs.1,00,000/- under a registered mortgage deed. Since a cloud has been caused on the title, the plaintiff whose husband had died, has filed the above suit for the relief stated therein.

3. In the written statement filed on behalf of the first defendant, the first defendant would submit that he is a *bonafide* purchaser for value from Shankaralinga Nadar and his brother Boologa Rajan. The first defendant would submit that the two brothers had sold 88 and 1/2 cents being the western portion of 1 acre and 77 cents of the land comprised in SR.No.364/1 along with 31 cents of land in the western portion which totally measures 62 cents comprised in S.No.364/3 under a registered sale deed dated 18.09.1978. He would further submit that the Sale Certificate issued in favour of the plaintiff's husband Prakash has not been registered before the Sub Registrar's Office. From the date of the purchase, the first defendant had been in open, continuous and hostile possession of the schedule property without disturbance of any one. This written statement had been filed on 04.10.2013. Thereafter, an additional written statement was filed on 26.03.2019, in which, the first defendant had contended that the plaintiff is estopped from filing the suit, since the plaintiff and her husband was aware about the sale deed and had not raised any objection to the same. In fact, the validity of the sale deed is not even a subject matter of the suit. Therefore, he sought to have the suit dismissed.

4. On 03.06.2019, the plaintiff has come forward with the present impugned application to amend the plaint. One of the amendment that is sought for was to seek the relief of a declaration that the sale deed dated 18.09.1978 executed by Shankaralinga Nadar and Boologa Rajan in favour of the first defendant is illegal and not valid. The only reason given for filing the suit application is that the registered sale deed dated 18.09.1978 got nullified by means of the rectification of the Patta by Revenue Divisional Officer, Kovilpatti, where by, the name of the first defendant was removed from

the joint Patta. However, by way of abundant caution, this application is filed. This application was objected by the defendants on the ground that it is clearly barred by limitation and that the plaintiff had not given adequate reason for as to why the relief was not included at the outset itself.

5. The learned Subordinate Judge, Thoothukudi, after hearing the arguments and perusing the records, dismissed the said application. Challenging the same, the plaintiff is before this Court.

6. The learned counsel appearing on behalf of the revision petitioner / plaintiff would contend that no prejudice will be caused to the respondent / defendant if the amendment is ordered and further the amendment would reduce the multiplicity of proceedings.

7. Heard the learned counsel appearing for the petitioner.

8. The amendment that is now sought for is a post trial amendment filed at a stage when the plaintiff's side witness PW1 had been cross examined. A perusal of the plaint would itself show that the plaintiff on the date of filing of the plaint, that is, on 06.08.2018, was very much aware about the sale in favour of the first defendant. In paragraph no.2 of the plaint, the plaintiff has stated as follows.

"நிலைமை இப்படியிருக்க வழக்கில் தோல்வியற்ற ஷை சங்கரலிங்க நாடார் அதற்கு பழி தீர்ப்பதற்காக, தன்னுடைய சகோதரர் பூலோக ராஜன் மற்றும் தூத்துக்குடி சுப்பையா நாடார் அவர்கள் குமாரரும், 1வது பிரதிவாதியமான S.மதியரசனுடன் வஞ்சக கூட்டு சேர்ந்து கொண்டு ஷை நீதிமன்ற தீர்ப்பாணையை அசட்டை செய்துவிட்டு 18.09.1978ல் ஒரு மோசடியான ரிஜிஸ்டர் கிரைய பத்திரம் உருவாக்கியுள்ளார்கள்."

Once again, while setting out the cause of action at paragraph no.6, the revision petitioner / plaintiff had reiterated the sale. The first defendant has filed his written statement on 04.10.2013, wherein, he has stated about the sale in his favour and has also stated that by being in open continuous possession of the schedule property from the date of the sale, he has perfected title to the property. Even thereafter, the revision petitioner / plaintiff has not moved an amendment petition. On 23.06.2019, an additional written statement was filed by the first defendant, in which, a statement has been made that the revision petitioner / plaintiff has not challenged the sale deed dated 18.09.1978. It is then that the revision petitioner / plaintiff has come forward with the amendment application, that too, when PW1 was in the witness box. The



affidavit filed in support of the amendment petition would make interesting reading. The revision petitioner / plaintiff has not stated that she has come into knowledge about the sale deed in favour of the first defendant only then. On the contrary, the revision petitioner / plaintiff has reiterated that she was aware, but has not taken steps to include that relief. In paragraph no.8 of the affidavit filed in support of the petition, the plaintiff has made the following statement.

"Though, the registered sale deed dated 18.09.1978 executed by Sankaralingam and his brother Boologarajan in favour of Mathiarasan, is nullified by subsequent event as RDO passed a favourable order towards my husband after elaborate enquiry on the basis of documents, the matter of abundant caution, the sale deed dated 18.09.1978 under document No.1973/1978 executed by Sankaralingam and Boologarajan in favour of Mathiarasan should be declared as null and void."

Therefore, it is crystal clear that the revision petitioner / plaintiff has consciously taken a decision not to include the relief of declaration that the sale deed executed in favour of the first defendant was null and void and she is seeking to amend the same only by way of an abundant caution. The Courts below have rightly dismissed the said petition and I do not find any reason to come to the rescue of a litigant who has taken a conscious decision and now seeks to amend the plaint, that too, at the stage of evidence.

9. In fine, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

mbi

To

The Sub-ordinate Judge, Thoothukudi.

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-1647[F] dated 19/01/2022)

C.R.P(MD)No.1389 of 2021

12.01.2022

nsn(CO)

<https://hcservices.ecourts.gov.in/hcservices/P> 3C