



CRP(MD)No.414 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.12.2022

CORAM:

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

CRP(MD)No.414 of 2017
and
CMP(MD)No.2090 of 2017

Sabiyal Beevi : Petitioner

Vs.

1.S.M.Shaikh Maideen

2.Ariba Begum

3.K.M.M.Khader Meeran : Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records pertaining to the order dated 09.03.2016 passed by the learned Additional District Munsif, Tenkasi, in I.A.No.121 of 2016 in O.S.No.483 of 2010 and set aside the same.

For Petitioner : Mr.A.Haja Mohideen

For Respondents : Mr.D.Srinivasa Raghavan
for R.1, R.2

No appearance
for R.3



CRP(MD)No.414 of 2017

ORDER

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The petitioner, as plaintiff, has filed a suit in O.S.No.484 of 2010 before the Additional District Munsif Court, Tenkasi, for the relief of declaration and permanent injunction in respect of the suit property. Pending the suit, she has moved an interlocutory application in I.A.No.121 of 2016 for verifying the alleged thumb impression of the petitioner found in the power deed dated 27.05.1994 executed in favour of one Abdul Kadar. The trial Court, by order dated 09.03.2016, dismissed this interlocutory application and challenging the same, the petitioner has moved the instant revision petition.

2.The case of the plaintiff is that the defendants are interfering with her peaceful possession of the suit property and therefore, she has moved the suit. The defendants are claiming that they have purchased the property from one Abdul Kadar, through a power deed dated 27.05.1994 executed by the plaintiff. According to the plaintiff, the alleged power deed was not executed by her and the thumb impression found therein is a forged one. Therefore, she has moved the interlocutory application for referring the thumb impression found in the alleged power deed for an expert opinion, however, the trial Court negated the same.



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3.Learned Counsel for the petitioner submitted that the burden of proof lies on the plaintiff to prove her right and title over the property and therefore, she has taken out the application for examining the alleged thumb impression of the petitioner found in the power deed dated 27.05.1994. The petitioner never used to put thumb impression in the documents and that she used to sign in all the documents. Without considering these aspects, the trial Court has dismissed the application and therefore, he prayed for appropriate orders.

4.Learned Counsel for the respondents 1 & 2 submitted that they have filed their written statements before the trial Court as early as on 30.06.2011, wherein, they have clearly stated that they purchased the property from one Abdul Kadar, the power agent of the petitioner, vide power deed dated 27.05.1994. The sale deed was executed in the year 1994. After five years, the petitioner has now come up with this interlocutory application for referring the thumb impression found in the power deed, as if she came to know about the same only now. The suit is in the stage of final arguments and the petitioner has filed this application at this stage only to protract the proceedings. Therefore, the trial Court has rightly dismissed the interlocutory application and he prayed for dismissal.



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5. Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondents 1 & 2. There is no representation for the third respondent.

6. The petitioner / plaintiff filed the suit on 08.10.2010 for the relief of declaration and injunction with regard to the suit property and the defendants have filed their written statements on 30.06.2011. In the written statements, the defendants have stated that the plaintiff has executed a power deed in favour of one Abdul Kadar on 27.05.1994, from whom, they purchased the suit property in the year 1994. Even assuming that the thumb impression found in the power deed is a forged one and that the petitioner did not know about the same, the fact remains that she came to know about the existence of such a power deed as on 30.06.2011 itself, after the filing of written statements by the defendants. However, after five years, she has taken out an application for referring the thumb impression found in the power deed. It appears that the petitioner has neither taken any steps to challenge the power deed nor initiated any action as against the persons involved in that document.



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7. Order 2 Rule 2 CPC requires every suit to include the whole of the claim to which the plaintiff is entitled, in respect of any particular cause of action. However, the plaintiff has an option to relinquish any part of his claim, if he/she chooses to do so. If the plaintiff so acts, he/she shall not, afterwards, sue for the part or portion of the claim that has been omitted or relinquished, without the leave of the Court. Order 2 Rule 2 CPC is extracted as follows:-

“2. Suit to include the whole claim.

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.”



8.The Hon'ble Supreme Court, in ***Pramod Kumar and Others v. Zalak***

Singh and Others [MANU/SC/0747/2019], has held as follows:-

“Order II Rule 2(1) provides that a plaintiff is to include the whole of the claim, which he is entitled to make, in respect of the cause of action. However, it is open to him to relinquish any portion of the claim. Order II Rule 2 provides for the consequences of relinquishment of a part of a claim and also the consequences of omitting a part of the claim. It declares that if a plaintiff omits to sue or relinquishes intentionally any portion of his claim, he shall be barred from suing on that portion so omitted or relinquished. Order II Rule 2(3), however, deals with the effect of omission to sue for all or any of the reliefs in respect of the same cause of action. The consequences of such omission will be to precluded plaintiff from suing for any relief which is so.”

9.It also appears that the petitioner / plaintiff has earlier filed two amendment applications in I.A.Nos.2245 of 2010 and 915 of 2015. The first application was allowed by the trial Court on 14.12.2010 permitting the petitioner to amend the name of the third defendant and the second application was allowed by the trial Court on 18.12.2015 permitting the petitioner to amend the term 'signature' as 'thumb impression' in the plaint.



CRP(MD)No.414 of 2017

10. Though there is no limitation for filing an application for expert opinion under Order 26 Rule 10A CPC, the same has to be filed at the earliest opportunity in the normal circumstances. In the case on hand, considering the sequence of events and also the stage of the suit, the trial Court has dismissed the interlocutory application. This Court, for the foregoing reasonings and discussions, does not find any error and is not inclined to interfere with the order of the trial Court.

Accordingly, this revision petition stands dismissed. Considering the age of the proceedings, the trial Court shall expedite the proceedings and shall conclude the same, as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
gk

12.12.2022

To

The Additional District Munsif,
Tenkasi.



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CRP(MD)No.414 of 2017

B.PUGALENDHI, J.

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