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C.R.P.(PD).No.563 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 02.03.2023

CORAM

HON'BLE JUSTICE **MR.JUSTICE SATHI KUMAR SUKUMARA KURUP**

C.R.P.(PD).No.563 of 2023
and CMP.No.4550 of 2023

V.M.Radjagobal

..Petitioner

Vs

1.S.Radjesvari

2.Naraayanan Naaidu

...Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the Order and Decree dated 09.02.2023 made in I.A.No.519 of 2022 in O.S.No.1099 of 2013 on the file of I Additional District Munsif by setting aside the same and allow the above revision.

For Petitioner : Mr.P.Dinesh Kumar

ORDER

The Plaintiff in I.A No.519 of 2022 had filed this Revision petition under Article 227 of the Constitution of India seeking to set aside the order of dismissal of I.A.No.519 of 2022 in O.S.No.1099 of 2013 filed by the Plaintiff under Order



VI Rule 17 RW. Section 151 of C.P.C seeking to amend the plaint.

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2.The learned Counsel for the Petitioner invited the attention of this Court to the proposed amendment as follows:-

"1. In the plaint in the 6th paragraph in 12th line to add the followings:

"the 2nd defendant played a fraud over his own father and mother, by drafting the sale deed in the English Language, either my father or mother does not know to read, right or speak in English rather my father alone knows how to sign in English."

2.In the plaint after 9th paragraph to add the followings:

"The Plaintiff submits that, the 1st defendant and 2nd defendant have no title right over the 2nd floor, as per the Sale deed vide Document No.6955/2006, Book I, Page No.1 to 12 Registered in the office of the District Registrar, Pondicherry stood in the name 2nd Defendant, as per the Settlement deed vide Document No.2192/2011, Book I, Page No.1 to 9 stands in the name of the 1st Defendant.

In-fact the actual suit property is consisting of Ground Floor,



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First Floor and Second floor and therefore on the said mere and false representations by the defendants in the said documents itself shows that, in order to get illegal gain over the suit property, the defendants fraudulently as well as forcibly obtained/executed such alleged documents and therefore the same have to be set aside for which the Plaintiff reserves his right to file suit for the same.

Further the Plaintiff submits that, the defendants have no title right over the 2nd floor. Hence the defendants have no authority to interfere with the peaceful possession and enjoyment suit mentioned 2nd floor of the suit schedule mentioned property".

3.The learned I Additional District Munsif, Puducherry in I.A.No.519 of 2022 in O.S.No.1099 of 2013 dated 09.02.2023 had observed as follows:-

" The Petitioner has filed this petition under order VI Rule 17 RW.Sec.151 of C.P.C., seeking permission to amend the plaint. The Plaintiff has stated in his affidavit that the second respondent / defendant has played fraud over his own father and



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mother by drafting the sale deed in the English Language either his father or mother did not know to write or speak in English and instead of executing sale deed in favour of his father, he executed the sale deed in his favour. On perusal of affidavit and petition, the father of the Petitioner has executed the Sale deed in favour of second respondent registered dated 26.11.2006

The respondents raised objection by filing counter that the petition is not maintainable under law and on facts. As per article 59 of limitation Act the amendment petition is not valid under law. The petition filed after 9 years of filing of the suit and 16 years of execution of alleged sale deed by Petitioner's father. As per article 59 of Limitation Act, prescribed 3 years limitation period to cancel or set aside an instrument or decree or for rescission of a contract. On this point this petition is not maintainable as per article 59 of limitation Act. On consideration of proposed amendment it will make new case different from original suit prayer. It is also not permissible under law. On perusal of records, it found that issues were



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framed and trial also commenced in Suit. Now the case was posted for cross examination of PW1. At this stage, the amendment petition was filed by the Petitioner / Plaintiff. This court strongly believes that the Petitioner has intention to prolong the case.

On perusal of plaint, the Petitioner seeking relief of permanent injunction only. The Petitioner did not seek any relief in respect of sale deed executed by his father in favour of second respondent. Without seeking any relief against the alleged sale deed, the proposed amendment will not maintain. On consideration of above discussion, this petition is liable to be dismissed.

In the result, this petition is dismissed. No cost."

4. It is to be noted that the suit was filed for bare injunction, he had not filed any suit for declaration. While so, it is the contention of the learned Counsel for the Petitioner that he has to necessarily plead the fraud played upon his father by the second defendant who is none other than younger brother of the Plaintiff, the



Petitioner herein in this CRP. Considering the fact that as rightly pointed out by the I Additional District Munsif, Puducherry. The pleadings will not help the Plaintiff, the pleading that he intends to incorporate will not help his case. Considering the relief sought in the plaint, the amendment sought is after 9 years of filing of the suit and the alleged sale deed was executed by his father 16 years before, it is for the father of the Plaintiff and the defendant to claim that there had been fraud played upon him by the Defendants. The father is not the plaintiff in this suit.

5. By any means, the plaint itself is found to have been not carefully drafted, the mere suit for injunction between the siblings, who are co-owners of the property is not at all maintainable. While so, the attempt of the Plaintiff to plead fraud after the alleged act after nine years of the suit and after 16 years of the alleged sale deed will not be entertained in any Court. Therefore this Court exercising supervisory jurisdiction cannot interfere with the well reasoned order, hence this Civil Revision Petition has to necessarily fail. In the result petition is dismissed as not maintainable. High Court cannot interfere with the well reasoned order of the learned District Munsif invoking the limitation Act. Therefore this



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Revision has to be dismissed at the admission stage itself. The Trial Court shall proceed with the trial, the Trial Court shall not be influenced by any of the observation made in the course of the order. Consequently connected CMP is closed.

02.03.2023

dsn

To

The learned I Additional District Munsif,
Puducherry.



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SATHI KUMAR SUKUMARA KURUP, J.

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