



C.R.P.(PD)No.2783 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.2783 of 2019
and C.M.P.No.18233 of 2019

1.Raji Gounder

2.Palanisamy

.. Petitioners

Vs.

1.Chinnappan

2.Mani

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 29.01.2019 passed in I.A.No.1 of 2019 in O.S.No.955 of 2015 by the III Additional District Munsif Court at Salem.

For Petitioners : Mr.C.D.Sugumar

For R2 : M/s.J.Prithivi



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ORDER

At the time of commencement of the argument, the learned counsel for the respondents would bring to my notice that the 1st respondent is dead. He fairly informed the Court that the legal heir of the 1st respondent is already on record as the 2nd respondent. Therefore, the learned counsel for the petitioners made a plea that this Court would record the 2nd respondent as the legal representative of the 1st respondent and proceed with the matter. His submission is recorded. The 2nd respondent is recognised as the legal representative of the 1st respondent.

2. The revision arises in the following circumstances:

(i) The civil revision petitioners are the plaintiffs and the respondents are the defendants. Chinnappan, the 1st respondent executed a settlement deed for the suit schedule mentioned property in favour of his son Mani, the 2nd respondent. The settlement deed was executed on 17.06.2015. On coming to know of the execution of the settlement deed, the plaintiffs filed a suit for declaration that the execution of the



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settlement deed by the 1st respondent in favour of the 2nd respondent is null and void and for consequential relief of permanent injunction restraining the defendants from interfering with the possession of the plaintiffs.

(ii) To the said suit, a detailed written statement was filed on 04.03.2016. After the presentation of the written statement, the matter was taken up for trial. At the stage of preparation for trial, the learned counsel who appears for the plaintiffs in the trial Court noticed that there is a denial in the written statement of the title of the plaintiffs. Therefore, he filed an application for amendment of the plaint in I.A.No.1 of 2019. The same was contested by the respondents stating that it is belated and therefore, should not be allowed.

3. The learned trial Judge was impressed with the arguments made by the respondents and dismissed the application on 29.01.2019.



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4. Aggrieved by the same, the present civil revision petition has been filed.

5. I have gone through the proposed amendment. All that the amendment seeks for is to include the prayer in the plaint. The inclusion of the prayer is not going to change the cause of action for the suit. It is on record that the plaintiffs' title was denied by the defendants and therefore, they were constrained to move an application for declaration of title. In the classic case of *Anathula Sudhakar vs. P.Buchi Reddy (dead) by legal heirs and others 2008 (4) SCC 594*, the Supreme Court was pleased to hold that where title is denied pending a proceeding, it is always open to a party to amend the plaint to seek for declaration of title on filing a fresh suit for declaration of title. The option having been given to the plaintiffs, the plaintiffs have chosen to amend the plaint.

6. I am certainly not with the view of the learned trial Judge that an amendment would attempt to fill the lacunae. Filling up of lacuna arises



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in a situation where the entire case has been projected in a manner leaving gaps in the evidence. Those gaps are sought to be filled by way of additional evidence without any plea. That does not arise here, because all that is being done is to seek for declaration of title, which if declared, the settlement deed unilaterally executed by D1 in favour of D2 would become questionable. I am able to appreciate the stand of the learned counsel for the respondents that there has been a delay, the written statement having been filed in the year 2016 and an amendment application was only filed in the year 2019. However, the delay can be offset in terms of costs. The amendment application need not be thrown out only on the ground of delay.

7. Therefore, the order in I.A.No.1 of 2019 in O.S.No.955 of 2015 dated 29.01.2019 on the file of the III Additional District Munsif Court at Salem is set aside on the following conditions:

(i) The petitioners shall pay a sum of Rs.10,000/- (Rupees Ten thousand only) to the 2nd respondent on or before 15.09.2023.



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(ii) In case, the cost is not paid, the Civil Revision Petition shall stand dismissed.

(iii) In case, the cost is paid, the learned trial Judge is requested to permit the plaintiffs to amend the plaint and proceed with the matter thereafter in accordance with law.

(iv) It is needless to say that the defendants will be entitled to file an additional written statement to the amended plaint filed by the plaintiffs.

8. With the above directions, the Civil Revision Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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V.LAKSHMINARAYANAN,J.

Kj

To

III Additional District Munsif
Salem.

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