



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 20.10.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.1259 of 2023
and
C.M.P.No.8514 of 2023

R. Elumalai

.. Petitioner

Vs.

1.P.V. Rathinam Achari
2.P.V. Kanthasami Achari
3.K. Nagarathinam Ammal
4.M. Palani
5.N. Venkatesan

.. Respondents

Civil Revision Petition filed Under Article 227 of Constitution of India, against the fair and decreetal order dated 27.01.2023 passed by the Learned District Munsif-cum-Judicial Magistrate at Thirukalukundram in I.A. No. 4 of 2022 in O.S. No. 10 of 2008.

For Petitioner	:	Mr.M.Rajasekar
For R1, R2	:	Died
For R3 to R5	:	No Appearance

ORDER

The petitioner has filed this Civil Revision Petition to set aside the order dated 27.01.2023. passed in I.A.No.4 of 2022 in O.S.No.10 of 2008 on the file of the learned District Munsif-cum-Judicial Magistrate at Thirukalukundram,



2. The petitioner has filed the suit in O.S. No. 10 of 2008 for the relief of declaration to declare that the sale deed dated 21.08.2006 is fraudulent, invalid and not binding on him as well as his late mother Kannammal in respect of the land in Survey No.102/A, bearing Patta No.113 measuring an extent of 1 acre 25 cents, for a consequential permanent injunction and other reliefs.

3. Pending suit, the petitioner filed I.A. No. 4 of 2022 in O.S. No. 10 of 2022 under Order VI Rule 17 and Section 151 of Civil Procedure Code seeking permission to amend the plaint as detailed schedule of the petition viz., (1) in the cause of action paragraph, line No.3 after the word "still today" to add the words "27.02.1964 and 04.07.1966, date of purchase of B-Schedule properties by Plaintiff's father Rajagopal Naicker and from that date onwards the plaintiff had been in possession and enjoyment of the said property and subsequently by Kanniammal and subsequently by the plaintiff to till date".

4. The said application was objected by the contesting defendants by stating that when the case is posted for further evidence, the plaintiff has filed the said application to include the averments to the effect that he is also claiming title over the property and as such it is clearly barred by limitation.



5. On considering both sides submissions, the learned trial Judge held that without proper pleading the plaintiff wanted to include the prayer. Further, the plaintiff approached the Court after commencement of trial and he ought to have been more vigilant in seeking such amendment as such it is not acceptable, hence the learned trial judge dismissed the application. Challenging the same the revision petitioner has preferred this revision.

6. The learned counsel for the revision petitioner submitted that the petitioner has now only traced out the old records and found that there are two sale deeds, which are registered documents whereby he perfected his title in respect of B-Schedule property to an extent of 99 cents. So he filed the application to amend the pleadings as well as prayer. If such amendment is not permitted, his substantial right will be defeated.

7. Even though notice was served, there is no representation on the side of the respondents in this Civil Revision Petition.

8. Admittedly the plaintiff relied on the sale deeds dated 27.02.1964 and 04.07.1966 which are more than 30 years old documents through which he claims title over the property. Admittedly he approached the Court for



declaration. Now he wants to add the prayer for declaration of the B-Schedule property. Having regard to the above, this Court feels that if opportunity is not given to the petitioner before the trial Court his valuable right will be defeated. However, the learned trial Judge erroneously dismissed the application, and the reason assigned for dismissal of the application for amendment is not justifiable. It is needless to mention that both the parties shall extend their cooperation for completion of trial. Further, after carrying out amendment in the plaint, the defendants shall be given permission to file additional written statement in respect of the said amendment. The learned trial Judge is also directed to dispose of the suit as early as possible.

9. Accordingly, this Civil Revision petition is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

20.10.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No

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To

1. The District Munsif-cum-Judicial Magistrate, Thirukalukundram.
2. The Section Officer,
VR-Section, High Court of Madras.

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T.V.THAMILSELVI, J.

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C.R.P.No.1259 of 2023

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